

# **AMERICAN IDENTITY & THE U.S. CONSTITUTION**

United States History ACP  
Social Studies Department  
Wellesley High School  
Academic Year 2012-2013

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Social Studies Department

# **American Identity and the Constitution**

## **Essential Questions:**

- ❑ **How have Americans redefined “We the People” over time?**
- ❑ **What blueprints for government were established by the Constitution of the United States?**
- ❑ **What are the qualities of the Constitution that make it an enduring document?**

## **Focus Questions:**

- ❑ **What does it mean to be an American?**
- ❑ **What problems need to be resolved when creating a new government and how did the founders resolve them?**
- ❑ **How does the Constitution protect against the tyranny of the masses?**
- ❑ **How does the system of checks and balances maintain a balance between the branches of the Federal Government?**
- ❑ **What was the major debate over ratifying the Constitution?**
- ❑ **How is the Constitution a living document?**
- ❑ **Why was the Bill of Rights added to the Constitution? What are your rights?**

Name:

### What does it mean to be an American?

Directions: Ask three (3) different individuals what it means to be an American and record their responses below. You should ask one male and one female and vary the ages of the individuals.

#### INDIVIDUAL #1

Gender	
Age	
Response	

#### INDIVIDUAL #2

Gender	
Age	
Response	

#### INDIVIDUAL #3

Gender	
Age	
Response	

# TEXT OF THE DECLARATION OF INDEPENDENCE

In CONGRESS, July 4, 1776

## A Declaration By the Representatives of the United States of America, In General Congress Assembled.

1 WHEN in the Course of human Events, it becomes necessary for one People to dissolve the Political Bands which have connected them with another, and to assume among the Powers of the Earth, the separate and equal Station to which the Laws of Nature and of Nature's God entitle them; a decent Respect to the Opinions of Mankind requires that they should declare the causes which impel them to the Separation.

2 We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness—That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient Causes; and accordingly all Experience hath shewn, that Mankind are more disposed to suffer, while Evils are sufferable, than to right themselves by abolishing the Forms to which they are accustomed. But when a long Train of Abuses and Usurpations, pursuing invariably the same Object, evinces a Design to reduce them under absolute Despotism, it is their Right, it is their Duty, to throw off such Government, and to provide new Guards for their future Security. Such has been the patient Sufferance of these Colonies; and such is now the Necessity which constrains them to alter their former Systems of Government. The History of the present King of Great-Britain is a History of repeated Injuries and Usurpations, all having in direct Object the Establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid World.

He has refused his Assent to Laws, the most wholesome and necessary for the public Good.

He has forbidden his Governors to pass Laws of immediate and pressing Importance, unless suspended in their Operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the Accommodation of large Districts of People, unless those People would relinquish the Right of Representation in the Legislature, a Right inestimable to them, and formidable to Tyrants only.

He has called together Legislative Bodies at Places unusual, uncomfortable, and distant from the Depository of their public Records, for the sole Purpose of fatiguing them into Compliance with his Measures.

He has dissolved Representative Houses repeatedly, for opposing with manly Firmness his Invasions on the Rights of the People.

He has refused for a long Time, after such Dissolutions, to cause others to be elected; whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the Dangers of Invasion from without, and Convulsions within.

He has endeavoured to prevent the Population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their Migrations hither, and raising the Conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone, for the Tenure of their Offices, and the Amount and Payment of their Salaries.

He has erected a Multitude of new Offices, and sent hither Swarms of Officers to harass our People, and eat out their Substance.

He has kept among us, in Times of Peace, Standing Armies, without the consent of our Legislatures.

He has affected to render the Military independent of and superior to the Civil Power.

He has combined with others to subject us to a Jurisdiction foreign to our Constitution and unacknowledged by our Laws; giving his Assent to their Acts of pretended Legislation:

For quartering large Bodies of Armed Troops among us;

For protecting them by a mock Trial from Punishment for any Murders which they should commit on the Inhabitants of these States;

For cutting off our Trade with all Parts of the World;

For imposing Taxes on us without our Consent;

For depriving us in many Cases, of the Benefits of Trial by Jury;

For transporting us beyond Seas to be tried for pretended Offences;

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an arbitrary Government, and enlarging its Boundaries, so as to render it at once an Example and fit Instrument for introducing the same absolute Rule into these Colonies;

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments;

For suspending our own Legislatures, and declaring themselves invested with Power to legislate for us in all Cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our Seas, ravaged our Coasts, burnt our Towns, and destroyed the Lives of our People.

He is, at this Time, transporting large Armies of foreign Mercenaries to compleat the Works of Death, Desolation, and Tyranny, already begun with circumstances of Cruelty and Perfidy, scarcely paralleled in the most barbarous Ages, and totally unworthy the Head of a civilized Nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the Executioners of their Friends and Brethren, or to fall themselves by their Hands.

He has excited domestic Insurrections amongst us, and has endeavoured to bring on the Inhabitants of our Frontiers, the merciless Indian Savages, whose known Rule of Warfare, is an undistinguished Destruction, of all Ages, Sexes and Conditions.

In every stage of these Oppressions we have Petitioned for Redress in the most humble Terms: Our repeated Petitions have been answered only by repeated Injury. A Prince, whose Character is thus marked by every act which may define a Tyrant, is unfit to be the Ruler of a free People.

Nor have we been wanting in Attentions to our British Brethren. We have warned them from Time to Time of Attempts by their Legislature to extend an unwarrantable Jurisdiction over us: We have reminded them of the Circumstances of our Emigration and Settlement here. We have appealed to their native Justice and Magnanimity, and we have conjured them by the Ties of our common Kindred to disavow these Usurpations, which would inevitably interrupt our Connections and Correspondence. They too have been deaf to the Voice of Justice and of Consanguinity. We must, therefore, acquiesce in the Necessity, which denounces our Separation, and hold them, as we hold the rest of Mankind; Enemies in War, in Peace, Friends.

We, therefore, the Representatives of the UNITED STATES OF AMERICA, in GENERAL CONGRESS, Assembled, appealing to the Supreme Judge of the World for the Rectitude of our Intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly Publish and Declare, That these United Colonies are, and of Right ought to be, FREE AND INDEPENDENT STATES; that they are absolved from all Allegiance to the British Crown, and that all political Connection between them and the State of Great-Britain, is and ought to be totally dissolved; and that as FREE AND INDEPENDENT STATES, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which INDEPENDENT STATES may of right do.

3 And for the support of this Declaration, with a firm Reliance on the Protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor.

Signed by ORDER and in BEHALF of the CONGRESS, JOHN HANCOCK, PRESIDENT

ATTEST, CHARLES THOMSON, SECRETARY

PHILADELPHIA: PRINTED BY JOHN DUNLAP

## The United States Constitution

We the People of the United States, in Order to form  
a more perfect Union, establish Justice, insure  
domestic tranquility, provide for the common  
defence, promote the general Welfare, and secure the  
Blessings of Liberty to ourselves and our Posterity,  
do ordain and establish this Constitution for the  
United States of America.

Name:

Class:

Date:

What is An American?

*In 1782, a collection of essays entitled Letters from an American Farmer was published in England and attracted immediate attention. The author, "Hector St. John", claimed to be a simple "farmer in Pennsylvania." In reality, he was Michel Guilame Jean de Crevecoeur, a student of colonial agriculture. His friends included George Washington, Ben Franklin, and Thomas Jefferson, who attended the wedding of his daughter. He returned to France in 1790 and died in 1813. This is the most quoted of his essays. He wrote this to his friend in England.*

What then is this new man?....He is an American who leaving behind him all his ancient (ideas) and manners, receives new ones from the new mode of life he has embraced, the new government he obeys, and the new rank (status) he hold....Here individuals of all nations are melted into a new race of men, whose labors and (future generations) will one day cause great changes in the world. Americans are the western pilgrims, who are carrying along with them that great collection of arts, sciences, vigor, and industry, which began long since in the east....the Americans were once scattered all over Europe. Here they are incorporated into one of the finest systems of population which has ever appeared, and which will hereafter become distinct ...Here the rewards of his industry follow with equal steps...the American is a new man, who acts upon new principles; he must therefore entertain new ideas, and form new opinions. From unemployment and servile dependence, he has passed to the work of a very different nature, rewarded by affluence. This is an American.

*What is his definition of "An American"?*

Name:  
Date:

US32

### What is American Identity?

Frederick Douglass, "The Meaning of July Fourth for the Negro" (1852)


*On July 5, 1852, Douglass gave a speech at an event commemorating the signing of the Declaration of Independence, held at Corinthian Hall in Rochester, New York. It was a biting oratory, in which the speaker told his audience, "This Fourth of July is yours, not mine. You may rejoice, I must mourn." And he asked them, "Do you mean, citizens, to mock me, by asking me to speak to-day?"*

*Within the now-famous address is what historian Philip S. Foner has called "probably the most moving passage in all of Douglass' speeches."*

What, to the American slave, is your 4th of July? I answer; a day that reveals to him, more than all other days in the year, the gross injustice and cruelty to which he is the constant victim. To him, your celebration is a sham; your boasted liberty, an unholy license; your national greatness, swelling vanity; your sound of rejoicing are empty and heartless; your denunciation of tyrants brass fronted impudence; your shout of liberty and equality, hollow mockery; your prayers and hymns, your sermons and thanksgivings, with all your religious parade and solemnity, are to him, mere bombast, fraud, deception, impiety, and hypocrisy -- a thin veil to cover up crimes which would disgrace a nation of savages. There is not a nation on the earth guilty of practices more shocking and bloody than are the people of the United States, at this very hour.



taken from American Ground Vista, Visions &  
Revisions 348-350



*Langston Hughes*  
Let America Be America Again  
(1938)

Let America be American again.  
Let it be the dream it used to be.  
Let it be the pioneer on the plain  
Seeking a home where he himself is free.

(America never was America to me.)

Let America be the dream the dreamers dreamed—  
Let it be that great strong land of love  
Where never kings connive nor tyrants scheme  
That any man be crushed by one above.

(It never was America to me.)

O, let my land be a land where Liberty  
Is crowned with no false patriotic wreath,  
But opportunity is real, and life is free,  
Equality is in the air we breathe.

(There's never been equality for me,  
Nor freedom in this "homeland of the free.")

*Say who are you that mumbles in the dark?  
And who are you that draws your veil across the stars?*

I am the poor white, fooled and pushed apart,  
I am the Negro bearing slavery's scars.  
I am the red man driven from the land,  
I am the immigrant clutching the hope I seek—  
And finding only the same old stupid plan  
Of dog eat dog, of mighty crush the weak.

(over)

*Irony in American Life*

I am the young man, full of strength and hope,  
Tangled in that ancient endless chain  
Of profit, power, gain, of grab the land!  
Of grab the gold! Of grab the ways of satisfying need!  
Of work the men! Of take the pay!  
Of owning everything for one's own greed!

I am the farmer, bondsman to the soil.  
I am the worker sold to the machine.  
I am the Negro, servant to you all.  
I am the people, worried, hungry, mean—  
Hungry yet today despite the dream.  
Beaten yet today—O, Pioneers!  
I am the man who never got ahead,  
The poorest worker bartered through the years.

Yet I'm the one who dreamt our basic dream  
In that Old World while still a serf of kings,  
Who dreamt a dream so strong, so brave, so true,  
That even yet its mighty daring sings  
In every brick and stone, in every furrow turned  
That's made America the land it has become.  
O, I'm the man who sailed those early seas  
In search of what I meant to be my home—  
For I'm the one who left dark Ireland's shore,  
And Poland's plain, and England's grassy lea,  
And torn from Black Africa's strand I came  
To build a "home-land of the free."

The free?

A dream—  
Still beckoning to me!

O, let America be America again—  
The land that never has been yet—  
And yet must be—  
The land where *every* man is free.  
The land that's mine—  
The poor man's, Indian's, Negro's, ME—  
Who made America,  
Whose sweat and blood, whose faith and pain,  
Whose hand at the foundry, whose plow in the rain,  
Must bring back our mighty dream again.

Sure, call me any ugly name you choose—  
The steel of freedom does not stain.  
From those who live like leeches on the people's lives,  
We must take back our land again,  
America!

Oh, yes,  
I say it plain,  
America never was America to me,  
And yet I swear this oath—  
America will be!  
An ever-living seed,  
Its dream  
Lies deep in the heart of me.

We, the people, must redeem  
Our land, the mines, the plants, the rivers,  
The mountains and the endless plain—  
All, all the stretch of these great green states—  
And make America again!



**Constitutional Argument:  
Speech After Being Convicted Of Voting  
In The 1872 Presidential Election** (abridged)

by Susan B. Anthony  
Suffragette/Pioneer for Women's Rights

Stump Speech delivered in all 29 postal districts of Monroe County, New York: 1872 - 1873

Friends and fellow citizens: I stand before you tonight under indictment for the alleged crime of having voted at the last presidential election, without having a lawful right to vote. It shall be my work this evening to prove to you that in thus doing, I not only committed no crime, but, instead, simply exercised my citizen's rights, guaranteed to me and all United States citizens by the National Constitution, beyond the power of any State to deny.

The preamble of the Federal Constitution says:

*We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.*

It was we, the people; not we, the white male citizens; nor we, the male citizens; but we, the whole people, who formed the Union. And we formed it, not to give the blessings of liberty, but to secure them; not to the half of ourselves and the half of our posterity, but to the whole people - women as well as men. And it is a downright mockery to talk to women of their enjoyment of the blessings of liberty while they are denied the use of the only means of securing them provided by this democratic-republican government - the ballot.

To them this government has no just powers derived from the consent of the governed. To them this government is not a democracy. It is not a republic. It is an odious aristocracy; a hateful oligarchy of sex; the most hateful aristocracy ever established on the face of the globe; an oligarchy of wealth, where the rich govern the poor. An oligarchy of learning, where the educated govern the ignorant, or even an oligarchy of race, where the Saxon rules the African, might be endured; but this oligarchy of sex, which makes father, brothers, husband, sons, the oligarchs over the mother and sisters, the wife and daughters, of every household - which ordains all men sovereigns, all women subjects, carries dissension, discord, and rebellion into every home of the nation.

The only question left to be settled now is: Are women persons? And I hardly believe any of our opponents will have the hardihood to say they are not. Being persons, then, women are citizens; and no state has a right to make any law, or to enforce any old law, that shall abridge their privileges or immunities.

Sources: Ellipses indicate areas where the text has been abridged by the editors of the book, Elizabeth Cady Stanton, Susan B. Anthony: Correspondence, Writings, Speeches Ed. by Ellen C. DuBois; New York, Shoken Books : 1981, pp. 152- 165.

RONALD TAKAKI

# A DIFFERENT MIRROR



*A History  
of  
Multicultural  
America*



LITTLE, BROWN AND COMPANY  
BOSTON NEW YORK TORONTO LONDON

## 1



### A DIFFERENT MIRROR

I HAD FLOWN FROM San Francisco to Norfolk and was riding in a taxi to my hotel to attend a conference on multiculturalism. Hundreds of educators from across the country were meeting to discuss the need for greater cultural diversity in the curriculum. My driver and I chatted about the weather and the tourists. The sky was cloudy, and Virginia Beach was twenty minutes away. The rearview mirror reflected a white man in his forties. "How long have you been in this country?" he asked. "All my life," I replied, wincing. "I was born in the United States." With a strong southern drawl, he remarked: "I was wondering because your English is excellent!" Then, as I had many times before, I explained: "My grandfather came here from Japan in the 1880s. My family has been here, in America, for over a hundred years." He glanced at me in the mirror. Somehow I did not look "American" to him; my eyes and complexion looked foreign.

Suddenly, we both became uncomfortably conscious of a racial divide separating us. An awkward silence turned my gaze from the mirror to the passing landscape, the shore where the English and the Powhatan Indians first encountered each other. Our highway was on land that Sir Walter Raleigh had renamed "Virginia" in honor of Elizabeth I, the Virgin Queen. In the English cultural appropriation of America, the indigenous peoples themselves would become outsiders in their native land. Here, at the eastern edge of the continent, I mused, was the site

## A DIFFERENT MIRROR

of the beginning of multicultural America. Jamestown, the English settlement founded in 1607, was nearby: the first twenty Africans were brought here a year before the Pilgrims arrived at Plymouth Rock. Several hundred miles offshore was Bermuda, the “Bermoothes” where William Shakespeare’s Prospero had landed and met the native Caliban in *The Tempest*. Earlier, another voyager had made an Atlantic crossing and unexpectedly bumped into some islands to the south. Thinking he had reached Asia, Christopher Columbus mistakenly identified one of the islands as “Cipango” (Japan). In the wake of the admiral, many peoples would come to America from different shores, not only from Europe but also Africa and Asia. One of them would be my grandfather. My mental wandering across terrain and time ended abruptly as we arrived at my destination. I said good-bye to my driver and went into the hotel, carrying a vivid reminder of why I was attending this conference.

QUESTIONS like the one my taxi driver asked me are always jarring, but I can understand why he could not see me as American. He had a narrow but widely shared sense of the past — a history that has viewed American as European in ancestry.

# Reading #1

AMY TAN

my mother speaks. Like others, I have described it to people as "broken" or "fractured" English. But I wince when I say that. It has always bothered me that I can think of no way to describe it other than "broken," as if it were damaged and needed to be fixed, as if it lacked a certain wholeness and soundness. I've heard other terms used, "limited English," for example. But they seem just as bad, as if everything is limited, including people's perceptions of the limited-English speaker.

I know this for a fact, because when I was growing up, my mother's "limited" English limited my perception of her. I was ashamed of her English. I believed that her English reflected the quality of what she had to say. That is, because she expressed them imperfectly, her thoughts were imperfect. And I had plenty of empirical evidence to support me: the fact that people in department stores, at banks, and in restaurants did not take her seriously, did not give her good service, pretended not to understand her, or even acted as if they did not hear her.

My mother has long realized the limitations of her English as well. When I was a teenager, she used to have me call people on the phone and pretend I was she. In this guise, I was forced to ask for information or even to complain and yell at people who had been rude to her. One time it was a call to her stockbroker in New York. She had cashed out her small portfolio, and it just so happened we were going to New York the next week, our first trip outside California. I had to get on the phone and say in an adolescent voice that was not very convincing, "This is Mrs. Tan."

My mother was standing in the back whispering loudly, "Why he don't send me check, already two weeks late. So mad he lie to me, losing me money."

## THE OPPOSITE OF FATE

And then I said in perfect English on the phone, "Yes, I'm getting rather concerned. You had agreed to send the check two weeks ago, but it hasn't arrived."

Then she began to talk more loudly. "What he want, I come to New York tell him front of his boss, you cheating me?" And I was trying to calm her down, make her be quiet, while telling the stockbroker, "I can't tolerate any more excuses. If I don't receive the check immediately, I am going to have to speak to your manager when I'm in New York next week." And sure enough, the following week, there we were in front of this astonished stockbroker, and I was sitting there red-faced and quiet, and my mother, the real Mrs. Tan, was shouting at his boss in her impeccable broken English.

We used a similar routine more recently, for a situation that was far less humorous. My mother had gone to the hospital for an appointment to find out about a CAT scan she had had a month earlier. She said she had spoken very good English, her best English, no mistakes. Still, she said, the hospital staff did not apologize when they informed her they had lost the CAT scan and she had come for nothing. She said they did not seem to have any sympathy when she told them she was anxious to know the exact diagnosis, since both her husband and her son had died of brain tumors. She said they would not give her any more information until the next time and she would have to make another appointment for that. So she said she would not leave until the doctor called her daughter. She wouldn't budge. And when the doctor finally called her daughter, me, who spoke in perfect English—lo and behold—we had assurances the CAT scan would be found, promises that a conference call on Monday would be

held, and apologies for any suffering my mother had gone through for a most regrettable mistake.

I think my mother's English almost had an effect on limiting my possibilities in life as well. Sociologists and linguists probably will tell you that a person's developing language skills are more influenced by peers than by family. But I do think that the language spoken in the family, especially in immigrant families which are more insular, plays a large role in shaping the language of the child. And I believe that it affected my results on achievement tests, IQ tests, and the SAT. While my English skills were never judged poor, compared with math, English could not be considered my strong suit. In grade school I did moderately well, getting perhaps B's, sometimes B-plus's, in English and scoring perhaps in the sixtieth or seventieth percentile on achievement tests. But those scores were not good enough to override the opinion that my true abilities lay in math and science, because in those areas I achieved A's and scored in the ninetieth percentile or higher.

This was understandable. Math is precise; there is only one correct answer. Whereas, for me at least, the answers on English tests were always a judgment call, a matter of opinion and personal experience. Those tests were constructed around items like fill-in-the-blank sentence completion, such as "Even though Tom was \_\_\_\_\_ Mary thought he was \_\_\_\_\_." And the correct answer always seemed to be the most bland combinations, for example, "Even though Tom was shy, Mary thought he was charming," with the grammatical structure "even though" limiting the correct answer to some sort of semantic opposites, so you wouldn't get answers like "Even though Tom was foolish, Mary

thought he was ridiculous." Well, according to my mother, there were very few limitations as to what Tom could have been and what Mary might have thought of him. So I never did well on tests like that.

The same was true with word analogies, pairs of words for which you were supposed to find some logical semantic relationship, for instance, "Sunset is to nightfall as \_\_\_\_\_ is to \_\_\_\_\_." And here you would be presented with a list of four possible pairs, one of which showed the same kind of relationship: *red* is to *stoplight*, *bus* is to *arrival*, *chills* is to *fever*, *yawn* is to *boring*. Well, I could never think that way. I knew what the tests were asking, but I could not block out of my mind the images already created by the first pair, *sunset* is to *nightfall*—and I would see a burst of colors against a darkening sky, the moon rising, the lowering of a curtain of stars. And all the other pairs of words—*red*, *bus*, *stoplight*, *boring*—just threw up a mass of confusing images, making it impossible for me to see that saying "A sunset precedes nightfall" was as logical as saying "A chill precedes a fever." The only way I would have gotten that answer right was to imagine an associative situation, such as my being disobedient and staying out past sunset, catching a chill at night, which turned into feverish pneumonia as punishment—which indeed did happen to me.

I have been thinking about all this lately, about my mother's English, about achievement tests. Because lately I've been asked, as a writer, why there are not more Asian-Americans represented in American literature. Why are there few Asian-Americans enrolled in creative writing programs? Why do so many Chinese students go into engineering? Well, these are broad sociological questions I can't begin to answer. But I have noticed in

# Reading # 2

## Dance of the Letters

My father, in a 1956 gray suit,  
had the jungle in his tie,  
a macaw on Kelly green.  
But today is Saturday, no briefs  
to prepare, and he's in a T-shirt.

I sit on his lap with my *ABC*  
*Golden Book*, and he orders the letters  
to dance. The *A* prancing red  
as an apple, the *E* a lumbering elephant,  
the *C* chased by the *D* while the sly *F*

is snickering in his russet fur coat.  
My mother says my breakthrough  
was the *M* somersaulting into a *W*.  
Not a mouse transformed into a wallaby  
at all, but sounds that we can see.

Later, my father trots me out  
to the living room like a trained *Z*.  
Not yet four, I read newspaper headlines  
out loud for Tito Juanito and Tita Naty  
or for anyone who drops in.

Six years later, I am that boy  
in a black Giants cap, intertwining orange  
letters *S* and *F*, carrying my father's  
forgotten lunch to the catacombs  
of the UCSF Medical Center,  
and I love the hallway cool before the swirling,  
heat from the Print Shop door.  
In his inky apron, my father smiles,  
but his eyes are tired. The night before,  
I pulled the pillow over my head, while he



## Reading #2.

argued with my mother  
till two a.m. about that old double bind:  
a rule to keep American citizens from  
practicing law in the Philippines.  
His University of Manila

law degree made useless.  
But California's just as bad.  
"You can't work in your goddamn  
profession stateside either!" he shouts.  
"Some land of opportunity."

There in the shimmer of the Print Shop, I can't  
understand his bitterness. I savor  
the staccato sounds. He leans  
into the noise of huge machines, putting  
vowels and consonants into neat stacks.

Vince Gotera

fense if I accidentally referred to him as an Indian, though I could not really imagine Mr. Pirzada being offended by much of anything. "Mr. Pirzada is Bengali, but he is a Muslim," my father informed me. "Therefore he lives in East Pakistan, not India." His finger trailed across the Atlantic, through Europe, the Mediterranean, the Middle East, and finally to the sprawling orange diamond that my mother once told me resembled a woman wearing a sari with her left arm extended. Various cities had been circled with lines drawn between them to indicate my parents' travels, and the place of their birth, Calcutta, was signified by a small silver star. I had been there only once and had no memory of the trip. "As you see, Lilia, it is a different country, a different color," my father said. Pakistan was yellow, not orange. I noticed that there were two distinct parts to it, one much larger than the other, separated by an expanse of Indian territory; it was as if California and Connecticut constituted a nation apart from the U.S.

My father rapped his knuckles on top of my head. "You are, of course, aware of the current situation? Aware of East Pakistan's fight for sovereignty?"

I nodded, unaware of the situation.

We returned to the kitchen, where my mother was draining a pot of boiled rice into a colander. My father opened up the can on the counter and eyed me sharply over the frames of his glasses as he ate some more cashews. "What exactly do they teach you at school? Do you study history? Geography?"

"Lilia has plenty to learn at school," my mother said. "We live here now, she was born here." She seemed genuinely proud of the fact, as if it were a reflection of my character. In her estimation, I knew, I was assured a safe life, an easy life, a fine education, every opportunity. I would never have to eat rationed food, or obey curfews, or watch riots from my rooftop, or hide neighbors in water tanks to prevent them from

being shot, as she and my father had. "Imagine having to place her in a decent school. Imagine her having to read during power failures by the light of kerosene lamps. Imagine the pressures, the tutors, the constant exams." She ran a hand through her hair, bobbed to a suitable length for her part-time job as a bank teller. "How can you possibly expect her to know about Partition? Put those nuts away."

"But what does she learn about the world?" My father rattled the cashew can in his hand. "What is she learning?"

We learned American history, of course, and American geography. That year, and every year, it seemed, we began by studying the Revolutionary War. We were taken in school buses on field trips to visit Plymouth Rock, and to walk the Freedom Trail, and to climb to the top of the Bunker Hill Monument. We made dioramas out of colored construction paper depicting George Washington crossing the choppy waters of the Delaware River, and we made puppets of King George wearing white tights and a black bow in his hair. During tests we were given blank maps of the thirteen colonies, and asked to fill in names, dates, capitals. I could do it with my eyes closed.

The next evening Mr. Pirzada arrived, as usual, at six o'clock. Though they were no longer strangers, upon first greeting each other, he and my father maintained the habit of shaking hands.

"Come in, sir. Lilia, Mr. Pirzada's coat, please."

He stepped into the foyer, impeccably suited and scarved, with a silk tie knotted at his collar. Each evening he appeared in ensembles of plums, olives, and chocolate browns. He was a compact man, and though his feet were perpetually splayed, and his belly slightly wide, he nevertheless maintained an efficient posture, as if balancing in either hand two suitcases of

"When Mr. Pirzada Came to Dine"

-Jhumpa Lahiri

Head

That night when I placed the plastic egg filled with cinnamon hearts in the box beside my bed, I did not feel the ceremonial satisfaction I normally did. I tried not to think about Mr. Pizada, in his lime-scented overcoat, connected to the unruly, sweltering world we had viewed a few hours ago in our bright, carpeted living room. And yet for several moments that was all I could think about. My stomach tightened as I worried whether his wife and seven daughters were now members of the drifting, clamoring crowd that had flashed at intervals on the screen. In an effort to banish the image I looked around my room, at the yellow canopied bed with matching flounced curtains, at framed class pictures mounted on white and violet papered walls, at the penciled inscriptions by the closet door where my father recorded my height on each of my birthdays. But the more I tried to distract myself, the more I began to convince myself that Mr. Pizada's family was in all likelihood dead. Eventually I took a square of white chocolate out of the box, and unwrapped it, and then I did something I had never done before. I put the chocolate in my mouth, letting it soften until the last possible moment, and then as I chewed it slowly, I prayed that Mr. Pizada's family was safe and sound. I had never prayed for anything before, had never been taught or told to, but I decided, given the circumstances, that it was something I should do. That night when I went to the bathroom I only pretended to brush my teeth, for I feared that I would somehow rinse the prayer out as well. I wet the brush and rearranged the tube of paste to prevent my parents from asking any questions, and fell asleep with sugar on my tongue.

No one at school talked about the war followed so faithfully in my living room. We continued to study the American Revolution, and learned about the injustices of taxation without representation, and memorized passages from the Declara-

if 3

tion of Independence. During recess the boys would divide in two groups, chasing each other wildly around the swings and seesaws, Redcoats against the colonies. In the classroom our teacher, Mrs. Kenyon, pointed frequently to a map that emerged like a movie screen from the top of the chalkboard, charting the route of the *Mayflower*, or showing us the location of the Liberty Bell. Each week two members of the class gave a report on a particular aspect of the Revolution, and so one day I was sent to the school library with my friend Dora to learn about the surrender at Yorktown. Mrs. Kenyon handed us a slip of paper with the names of three books to look up in the card catalogue. We found them right away, and sat down at a low round table to read and take notes. But I could not concentrate. I returned to the blond-wood shelves, to a section I had noticed labeled "Asia." I saw books about China, India, Indonesia, Korea. Eventually I found a book titled *Pakistan: A Land and Its People*. I sat on a footstool and opened the book. The laminated jacket crackled in my grip. I began turning the pages, filled with photos of rivers and rice fields and men in military uniforms. There was a chapter about Dacca, and I began to read about its rainfall, and its jute production. I was studying a population chart when Dora appeared in the aisle.

"What are you doing back here? Mrs. Kenyon's in the library. She came to check up on us."

I slammed the book shut, too loudly. Mrs. Kenyon emerged, the aroma of her perfume filling up the tiny aisle, and lifted the book by the tip of its spine as if it were a hair clinging to my sweater. She glanced at the cover, then at me.

"Is this book a part of your report, Lilia?"

"No, Mrs. Kenyon."

"Then I see no reason to consult it," she said, replacing it in the slim gap on the shelf. "Do you?"

\* \* \*

# Reading #4

I Am Who I Am, So What  
by Raquel Valle Senties

*translated from the Spanish by Raquel Valle Senties*

I'm a grafted flower that didn't  
take, a Mexican without being one,  
an American without feeling like one.

The music of my people fills me.  
The huapangos, rancheras,  
and the Mexican National Anthem  
give me goose bumps, a lump  
in my throat. They make my feet tap  
to the beat. But I feel as if I'm wearing  
a borrowed hat.  
Mexicans stare as if saying,  
"You're not a Mexican!"

The "Star-Spangled Banner" also  
gives me goose bumps,  
a lump in my throat.  
Gringos stare as if saying,  
"You're not an American!"  
My soul crumples.  
My heart has no room for two  
countries as it has no room  
for two lovers.  
Not from here, not from there,  
not Mexican enough,  
not American enough.

I'll have to say,  
I'm from the border,  
from Laredo,  
from a strange place

neither Mexican nor American,  
where at sunset the smell of  
fajitas grilled over mesquite  
makes my mouth water,  
where on birthdays  
we sing "Happy Birthday"  
and "Las mañanitas."  
Where we celebrate George  
Washington's birthday—who  
knows why?  
Where outsiders get culture  
shock and can live here fifty  
years and still be outsiders;  
where in many places the  
green, white and red flag  
waves proudly beside  
the red, white and blue.

Displaced like the Río  
Grande, once a part of Mexico,  
a puppet jerked by the strings  
of two cultures that clash. I'm  
la mestiza  
la pocha,  
la Tex-Mex,  
la Mexican-American,  
la hyphenated  
who lacks identity  
and struggles to find it,  
who no longer wants to  
ignore a reality  
that strikes her,  
that wounds her,  
who no longer wants  
to bite her tongue,

Integrity #4

who in Veracruz defended  
the United States with  
volcanic passion,  
who in Laredo defends  
México the same way.

I am a walking contradiction.  
In other words, like Laredo,  
I am who I am. So what?

1. Jot down anything that was shocking or surprising about your reading.

2. Was your author able to access the promises or ideals associated with being an American? Provide examples/explanation—use specifics from your reading.

3. What contradictions were identified in your piece?

## **American Identity**

For the past few days we have spent time discussing our own personal identity and how American identity plays a role within this. The idea of an American identity has changed over time-and means many different things to different people. Consider the documents we have studied and how they shape American identity. What do they say about America and the promise of this nation?

Your task in this exploration of American identity is to answer one of the following questions in a complete paragraph. Your paragraph must include a topic sentence, evidence, analysis, and a concluding sentence. You must also reference one of the documents we read.

1. What is the promise of American identity?
2. What are the contradictions of American identity?
3. Does being an American guarantee the promise? Explain and defend your response.

## Evaluating Parts of a Paragraph:

### Topic Sentences

*Requirements:*

- A topic sentence is the first sentence of your paragraph.

**Avoid- making broad statements: “Throughout all of history...”**

- It contains an **idea** – not a statement of fact.

**Avoid- All men are created equal as stated in the DOI**

- It should be **ONE** main idea.
- It contains analysis.

**Avoid- Being an American does not guarantee the promises...**

- It should answer the questions asked.

\*Your topic sentences should be able to be read independently from your paper and the reader would understand the flow of your argument and how it is going to be proven.

### Evidence

*Goal:* To prove the claims made in your topic sentences

*Requirements:*

- Specific
- Numerous-at least 2 per paragraph
- Accurate
- Contextualized and explained properly- provide time period
- Introduced properly-
  - As Historian Frederick Jackson Turner stated in his Frontier Thesis...

### Analysis

*Goal:* To explicitly explain how your evidence connects to and furthers your central argument.

*Requirements:*

- A complex connection is drawn between evidence and claim

### Conclusion Sentence:

Provide a summative idea that concludes information in paragraph.



## Chapter 1

# Writing a Constitution

*We hold these truths to be self-evident: that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. . . . That to secure these rights, governments are instituted men, deriving their just powers from the consent of the governed.*

So wrote Thomas Jefferson in the Declaration of Independence, the renowned document penned and published in 1776 that officially proclaimed the independence of the colonies from Great Britain. These time-honored words reflect much about the



Independence Hall

colonists' continuing struggle with King George III and Parliament. In the eyes of Jefferson and many others, the British government had failed to guarantee the colonists the rights they deserved. In declaring independence, Jefferson and his compatriots set out to free the colonies from oppressive overseas rule and establish governments that fulfilled the desires of the people and guaranteed them necessary rights. To that end, Jefferson proceeded to insist in the Declaration that each colony have the power to establish an independent government. "[A]s free and independent

states," he wrote, "[the former colonies] have full power to do all acts and things which independent states may of right do."

Having overthrown one government, the new nation immediately began creating fourteen new governments. As each colony assumed statehood, it appointed committees to draw up a state constitution in order to define and establish the duties, powers, and organization of the government. In the meantime, Congress appointed a committee to write a national constitution that would govern all these "free and independent states."

### The Articles of Confederation

Furthermore, the Articles of Confederation allowed for a different relationship between state governments and the national government than does today's constitution. The powers granted Congress were severely limited—it had the power to coin money, make treaties, raise armies, and make war, but lacked the authority to collect taxes, impose tariffs, suppress rebellions, draft soldiers, or to regulate trade between the states or with foreign countries. The states had many of the powers the articles denied them: coining money, taxing imports (even from other states), raising armies, and enforcing treaties. Congress's reliance on states for law enforcement made the central government weak and the state governments strong. If Congress needed money, for instance, it would ask the states for the necessary funds and the states could decide whether or not to supply the national government with the money it needed.

As time wore on, the government created by the Articles of Confederation proved less and less effective. In 1786, a rebellion led by Daniel Shays of Massachusetts demonstrated the faults present in the Confederation. Farmers, many of whom had suffered monetary losses in the years following the war, wanted their debts canceled and demanded that the state legislature print paper money. When the legislature refused, the rebels attacked the federal arsenal in Springfield. The rebellion was suppressed only after Boston merchants raised enough money to put together an army to oppose Shays.

Many American leaders looked to the incident in Massachusetts as proof that America needed a stronger central government—a government that could put down rebellions, solve financial problems, and resist the demand for paper money. Other colonists, having witnessed the U.S. government's problems in winning the Revolution, collecting taxes, regulating trade, and conducting foreign policy, shared this lack of confidence in the government of the Confederation. They called for a new constitution to remedy the problems that plagued the nation.

Alexander Hamilton, James Madison, and George Washington emerged to lead the movement for a new constitution. In February of 1787, Congress called for a convention to meet in Philadelphia in order to "revise" the Articles of Confederation. Ignoring their limited instructions, fifty-five delegates, representing twelve different states, decided that the U.S. needed a completely different plan of government. They scrapped the Articles and proceeded to take on the daunting task of writing what became the constitution that has governed this nation since its ratification in 1788.

Name:  
Date:

**What problems need to be resolved when creating a new government and how did the founders resolve them?**

Issue:	Key points of the issue:	What compromise did the founding fathers agree on?
1- Representation,		
2- Authority: Local v. National governments		
3 – Democracy v. Checks & Balances		

4 - Bill of Rights		
5 - Slavery & Slave Trade		

## **The United States Constitution: In Your Own Words!**

Task: Read the Constitution and summarize the main idea of each Article in your own words. You are not required to summarize each section that is found in the Article, however, you should reference those that you think are significant.

	<b>Summary of the Article</b>
<b>Preamble</b>	
<b>Article I</b>	
<b>Article II</b>	
<b>Article III</b>	
<b>Article IV</b>	

**Continue on the back. When you're finished summarizing the Constitution, answer the questions.**

<b>Article V</b>	
<b>Article VI</b>	
<b>Article VII</b>	

1. How many amendments are there:
2. When was the last amendment ratified?
3. Based on your reading, which branch of government do you think was supposed to be the strongest?  
Provide specific evidence to back up your claims.

slave trade. To resolve this issue, the convention gave Congress the power to regulate trade but prevented it from interfering with the slave trade for at least 20 years. Although the proposal passed, not all the delegates agreed with it. James Madison predicted, "Twenty years will produce all the mischief that can be apprehended from the liberty to import slaves. So long a term will be more dishonorable to the national character than to say nothing about it in the Constitution."

Begin →

## Creating a New Government

After reaching agreement on questions of slavery and representation, the delegates dealt with other issues. They divided power between the states and the national government and separated the national government's power into three branches.

**DIVISION OF POWERS** The new system of government was a form of **federalism** that divided power between the national government and the state governments. The powers granted to the national government by the Constitution are known as delegated powers, or enumerated powers. These include such powers as control of foreign affairs, providing national defense, regulating trade between the states, and coining money. Powers kept by the states are called reserved powers. These include powers such as providing and supervising education, establishing marriage laws, and regulating trade within a state. ☺

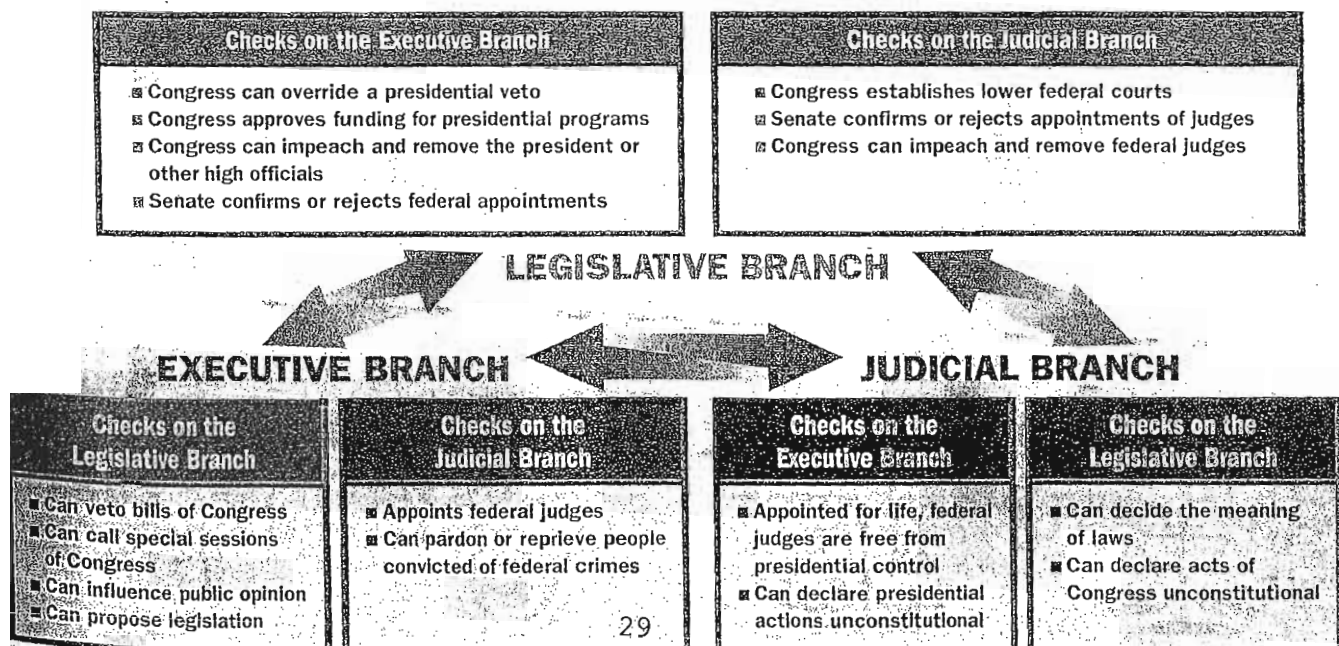
Both levels of government share such important powers as the right to tax, to borrow money, and to pay debts. They also share the power to establish courts.

**SEPARATION OF POWERS** The delegates protected the rights of the states, but they also granted some powers exclusively to the national government. At the same time, they limited the authority of the government. First, they created three branches of government—a **legislative branch** to make laws, an **executive branch** to carry out laws, and a **judicial branch** to interpret the law.

Then the delegates established a system of **checks and balances** to prevent one branch from dominating the others. (See the chart below.) For example, the president has considerable power, but the Senate has to approve some of the president's decisions. The president can veto acts of Congress, but Congress can override a veto by a

**MAIN IDEA**  
**Summarizing**  
☺ Which powers were granted to the national government and to the state governments?

## The Checks and Balances of the Federal System





### THE ELECTORAL COLLEGE

Distrust of popular sovereignty led the framers of the Constitution to devise a complicated system of electing the president. The creation of an electoral college ensured that a college of electors, or representatives, would have the last say in the vote.

In the 2000 presidential election, the electoral college played a decisive role in choosing the president. Even though Al Gore won the popular vote by a margin of almost 540,000, the electors gave George W. Bush 271 electoral votes—one vote more than the 270 votes needed to win the presidency.

two-thirds vote. The Supreme Court assumes the power to interpret the Constitution, but the president appoints the justices, and Congress can bring them to trial for abuses of power.

The procedure for electing the president reflected two main concerns. Because there were no national political parties and because travel and communication were limited, there was a fear that the popular vote would be divided among many regional candidates. Also, many among the upper classes distrusted and feared the lower classes. Some did not trust the common people to vote wisely; others trusted them to vote the upper class out of power. So the delegates came up with a new system of electing the president. Instead of voters choosing the president directly, each state would choose a number of electors equal to the number of senators and representatives the state had in Congress. The group of electors chosen by the states, known as the **electoral college**, would cast ballots for the candidates.

**CREATING THE CONSTITUTION** Finally, the delegates provided a means of changing the Constitution through the amendment process. After nearly four months of debate and compromise, the delegates succeeded in creating a constitution that was flexible enough to last through the centuries to come. Yet when George Washington adjourned the convention on September 17, 1787, he was somewhat uncertain about the future of the new plan of government. Washington remarked to a fellow delegate, "I do not expect the Constitution to last for more than 20 years."

The convention's work was over, but the new government could not become a reality until the voters agreed. So the Constitution of the United States of America was sent to the Congress, which submitted it to the states for approval.



## **Branches of Government:**

### **Executive Branch:**

The power of the Executive Branch is vested in the President of the United States, who also acts as head of state and Commander-in-Chief of the armed forces. The President is responsible for implementing and enforcing the laws written by Congress and, to that end, appoints the heads of the federal agencies, including the Cabinet. The Vice President is also part of the Executive Branch, ready to assume the Presidency should the need arise.

The Cabinet and independent federal agencies are responsible for the day-to-day enforcement and administration of federal laws. These departments and agencies have missions and responsibilities as widely divergent as those of the Department of Defense and the Environmental Protection Agency, the Social Security Administration and the Securities and Exchange Commission.

Including members of the armed forces, the Executive Branch employs more than 4 million Americans.

### **Legislative Branch:**

Established by Article I of the Constitution, the Legislative Branch consists of the House of Representatives and the Senate, which together form the United States Congress. The Constitution grants Congress the sole authority to enact legislation and declare war, the right to confirm or reject many Presidential appointments, and substantial investigative powers.

The House of Representatives is made up of 435 elected members, divided among the 50 states in proportion to their total population. In addition, there are 6 non-voting members, representing the District of Columbia, the Commonwealth of Puerto Rico, and four other territories of the United States. The presiding officer of the chamber is the Speaker of the House, elected by the Representatives. He or she is third in the line of succession to the Presidency.

Members of the House are elected every two years and must be 25 years of age, a U.S. citizen for at least seven years, and a resident of the state (but not necessarily the district) they represent.

The House has several powers assigned exclusively to it, including the power to initiate revenue bills, impeach federal officials, and elect the President in the case of an electoral college tie.

The Senate is composed of 100 Senators, 2 for each state. Until the ratification of the 17th Amendment in 1913, Senators were chosen by state legislatures, not by popular vote. Since then, they have been elected to six-year terms by the people of each state. Senator's terms are staggered so that about one-third of the Senate is up for reelection every two years. Senators must be 30 years of age, U.S. citizens for at least nine years, and residents of the state they represent.

The Vice President of the United States serves as President of the Senate and may cast the decisive vote in the event of a tie in the Senate.

The Senate has the sole power to confirm those of the President's appointments that require consent, and to ratify treaties. There are, however, two exceptions to this rule: the House must also approve appointments to the Vice Presidency and any treaty that involves foreign trade. The Senate also tries impeachment cases for federal officials referred to it by the House.

In order to pass legislation and send it to the President for his signature, both the House and the Senate must pass the same bill by majority vote. If the President vetoes a bill, they may override his veto by passing the bill again in each chamber with at least two-thirds of each body voting in favor.

## **Judicial Branch:**

Where the Executive and Legislative branches are elected by the people, members of the Judicial Branch are appointed by the President and confirmed by the Senate.

Article III of the Constitution, which establishes the Judicial Branch, leaves Congress significant discretion to determine the shape and structure of the federal judiciary. Even the number of Supreme Court Justices is left to Congress — at times there have been as few as six, while the current number (nine, with one Chief Justice and eight Associate Justices) has only been in place since 1869. The Constitution also grants Congress the power to establish courts inferior to the Supreme Court, and to that end Congress has established the United States district courts, which try most federal cases, and 13 United States courts of appeals, which review appealed district court cases.

Federal judges can only be removed through impeachment by the House of Representatives and conviction in the Senate. Judges and justices serve no fixed term — they serve until their death, retirement, or conviction by the Senate. By design, this insulates them from the temporary passions of the public, and allows them to apply the law with only justice in mind, and not electoral or political concerns.

Generally, Congress determines the jurisdiction of the federal courts. In some cases, however — such as in the example of a dispute between two or more U.S. states — the Constitution grants the Supreme Court original jurisdiction, an authority that cannot be stripped by Congress.

The courts only try actual cases and controversies — a party must show that it has been harmed in order to bring suit in court. This means that the courts do not issue advisory opinions on the constitutionality of laws or the legality of actions if the ruling would have no practical effect. Cases brought before the judiciary typically proceed from district court to appellate court and may even end at the Supreme Court, although the Supreme Court hears comparatively few cases each year.

Federal courts enjoy the sole power to interpret the law, determine the constitutionality of the law, and apply it to individual cases. The courts, like Congress, can compel the production of evidence and testimony through the use of a subpoena. The inferior courts are constrained by the decisions of the Supreme Court — once the Supreme Court interprets a law, inferior courts must apply the Supreme Court's interpretation to the facts of a particular case.

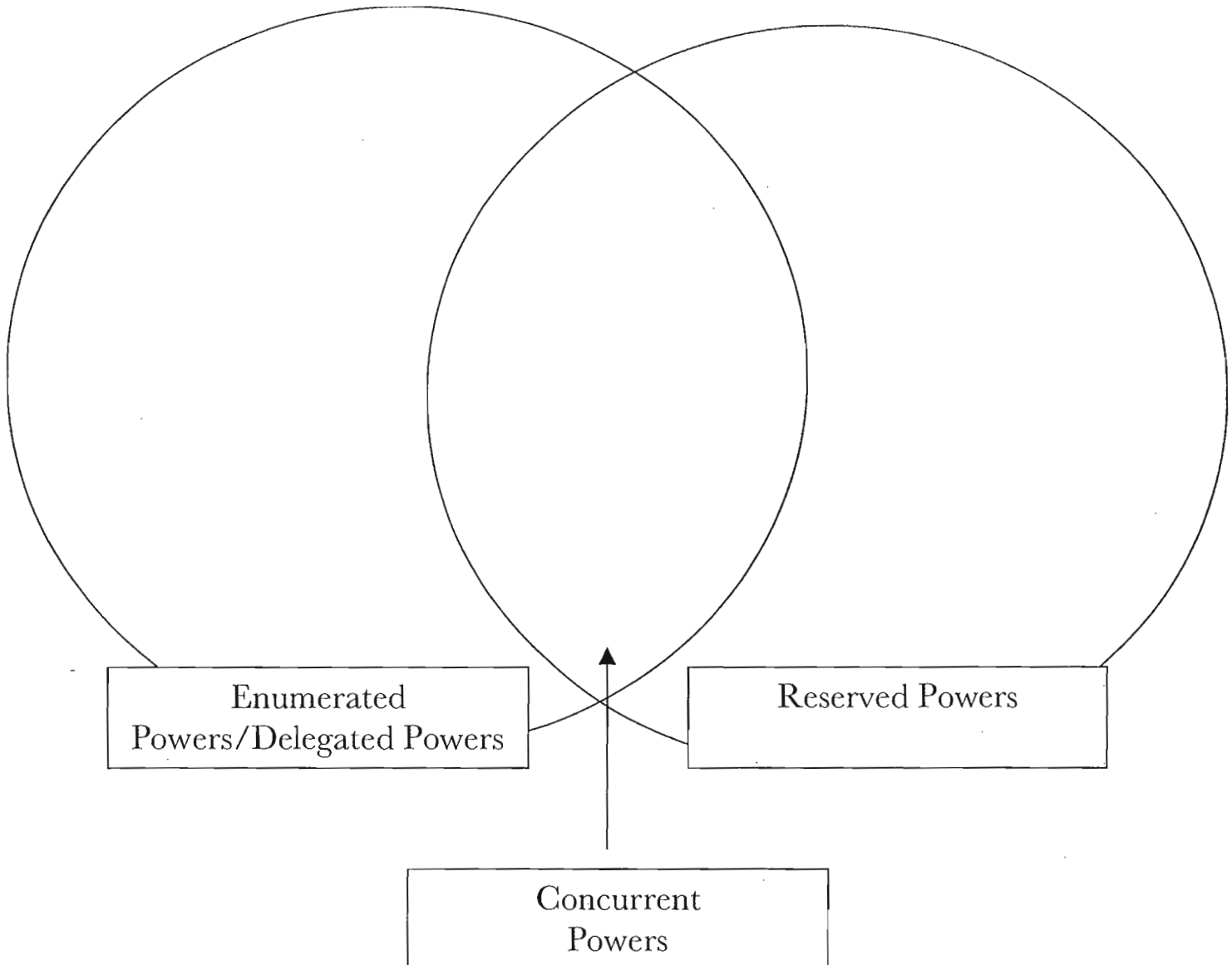
Taken From: <http://www.whitehouse.gov/our-government>

# The Federal System

**Federalism is:**

**Powers:**

Maintain an army & navy	Issue drivers license	Impose taxes	Create marriage laws
Declare war	Make agreements with other countries	Protect rights	Make laws for the environment
Punish law breakers	Coin money	Establish schools	Create standards for schools
Conduct elections	Establish local governments	Regulate state commerce	Establish courts
Build roads	Regulate trade between states and w/ foreign nations	Set standards for weights, measures, copyrights and patents	Borrow money to pay expenses



## Can We Justify the Implied Powers of Congress?

According to the necessary and proper clause, Congress generally may assume additional powers not specifically listed in the Constitution, sometimes called implied powers, if there is a link to a power that is listed in the Constitution. For example, Congress may allocate money to test a missile-defense system (something not specifically listed in the Constitution) because Article I, Section 8, Clause 12 gives Congress the power to "raise and support Armies".

While the above example may seem like an obvious extension of Congress's power, other powers that Congress has assumed over the years are not so obvious extensions of powers specifically listed in the Constitution. The exercise below gives you a list of implied powers of Congress. Beside each one, try to locate a clause in Article I, Section 8 of the Constitution that could justify Congress assuming that implied power. If you do not think there is justification in the Constitution for that power, write "no justification" in the space provided. Be prepared to back up your answers.

**IMPLIED POWER:** Congress gives licenses to broadcasters to play music on the radio.

**ANSWER:** *Clause 3 may justify this activity. It gives Congress the power to regulate interstate commerce. Broadcasting is a business. Thus, it is commerce. Airwaves cross over state lines, so it involves interstate commerce.*

Congress sets a federal minimum wage.

Congress establishes the United States Air Force

Congress establishes national parks

Congress creates federal laws against pollution

Congress makes laws regarding discrimination in employment

Congress decides that televisions should have V-chips that enable parents to block certain shows

Congress passes the Gun-Free School Zones Act prohibiting anyone from possessing a firearm in a school zone

# The United States Constitution

## A System of Checks and Balances



**Legislative Branch**

**Executive Branch**



Legislative CHECKS Executive	Executive CHECKS Legislative
<ol style="list-style-type: none"> <li>1. Congress can refuse to pass laws</li> <li>2. Congress can override the veto</li> <li>3. Congress can refuse to approve appointments</li> <li>4. Congress can impeach</li> </ol>	<ol style="list-style-type: none"> <li>1. The President can veto laws passed by Congress</li> <li>2. The President can call special sessions of Congress and recommend legislation</li> </ol>

**Legislative Branch**



**Judicial Branch**



Legislative CHECKS Judiciary	Judiciary CHECKS Legislative
<ol style="list-style-type: none"> <li>1. Congress can impeach</li> <li>2. Congress can change the number of judges</li> <li>3. Congress can replace unconstitutional laws</li> <li>4. Congress approves judicial choices</li> </ol>	<ol style="list-style-type: none"> <li>1. The courts can declare laws "UNCONSTITUTIONAL"</li> </ol>

**Executive Branch**



**Judicial Branch**



Executive CHECKS Judiciary	Judiciary CHECKS Executive
<ol style="list-style-type: none"> <li>1. The President nominates judges</li> <li>2. The President grants pardons</li> </ol>	<ol style="list-style-type: none"> <li>1. The courts can declare Presidential actions "UNCONSTITUTIONAL"</li> </ol>

# Checks and Balances

The U.S. Constitution provides that the three branches operate under a system of “checks and balances” so that no one branch can become too powerful. In the cases presented below do the following:

- 1) What is wrong with each?
- 2) What can be done about it according to the Constitution?

## Case #1

The President of the U.S. appoints an old childhood friend to his Cabinet as Sec. of State. However, the old friend only has a 10<sup>th</sup> grade education and knows very little about foreign affairs.

## Case #2

By a slight majority both houses of Congress pass a bill raising their salary 300%. The President feels that the American people are paying too much in taxes and this pay raise would increase that burden. He believes the bill is unreasonable.

## Case #3

During war Congress passes a bill stating that anyone who speaks out against the U.S. Government during this time of crisis will be considered an enemy of the nation and thrown into jail. The President signs the bill and it becomes law.

## Case #4

Evidence shows that the President has transferred funds from the U.S. Treasury to his own personal bank account. He lies to the American people about this action, until finally, tape recordings are presented on which he discusses a cover up of this crime with his aides.

## Case #5

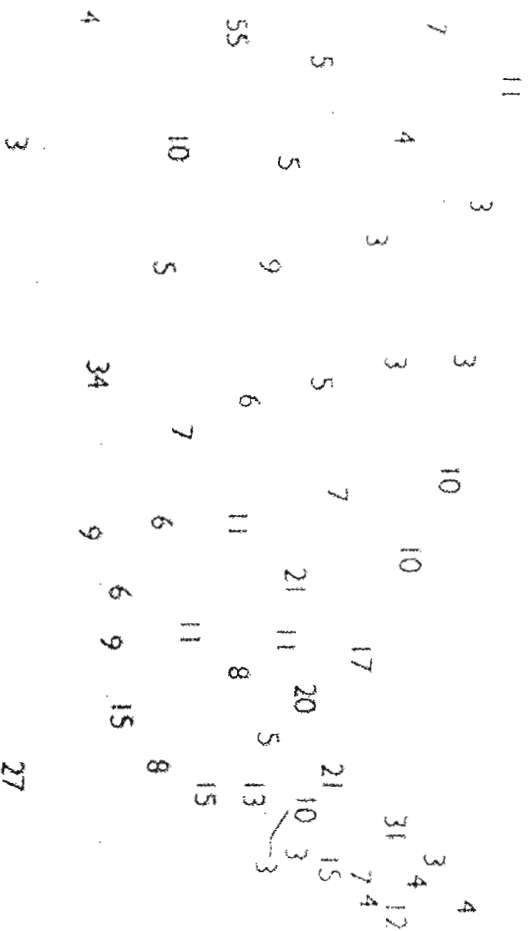
The President negotiates a treaty with Mexico. In it he gives Mexico the right to drill for oil on American territory. The majority of the American people are furious. They believe they need the oil more than Mexico.

## Case #6

The majority of the American people feel that the rich oil companies should be taxed more. Congress unanimously passes a bill to raise oil companies' taxes. The President remembers that oil companies contributed huge sums of money to his election campaign. He vetoes the bill.

*Adapted from - our white house.org (June 20, 2010)*

2008 Electoral College Map (Number of Electoral Votes per State)



### Granting Electors

Article II of the Constitution grants each state the same number of electors to the Electoral College as it has Congressional representatives and senators. However, the Constitution does not stipulate rules that each state must follow in granting the electoral votes to presidential candidates. So, even though forty-eight states use a winner-take-all system (giving all its electoral votes to the candidate who receives the highest popular vote), the states of Maine and Nebraska do not. These two states grant their electoral votes based on the popular votes in each congressional district of their states. That means if a candidate receives the majority of votes in California, he or she will be awarded all fifty-five electoral votes. But if the same candidate does not win the majority in Nebraska, he or she can still gain one or two electoral votes if he or she wins one or more district.



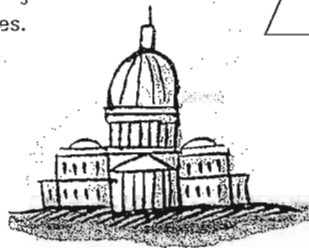
## THE FORMAL AMENDMENT PROCESS

According to Article V, amendments may be proposed in two ways, and they may be approved by the states in two ways, creating four possible paths that a proposed amendment may take. Congress selects the methods of ratification and sets time limits (now seven years) for ratification. The chart below illustrates these paths.

### TWO WAYS TO PROPOSE AMENDMENTS

Proposed by  $\frac{2}{3}$  vote of each house of Congress

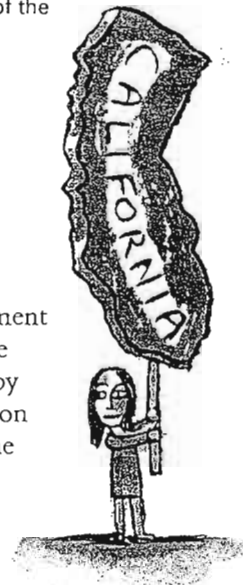
Proposed by a national constitutional convention requested by at least  $\frac{2}{3}$  of state legislatures.



### TWO WAYS TO RATIFY AMENDMENTS

Ratified by at least  $\frac{3}{4}$  of the state legislatures

Ratified by specially called conventions in at least  $\frac{3}{4}$  of the states



The flexibility the Founders built in to the amendment process has not been fully tested so far because 26 of the 27 amendments have followed the same path: proposal by two-thirds vote of each house of Congress and ratification by at least three-fourths of the state legislatures. Only the 21<sup>st</sup> Amendment was adopted by a different method. There has not been a constitutional convention held since 1787, perhaps because of the fear that delegates might possibly vote to throw out the whole Constitution.



## Ratifying the Constitution

### Part A.

Read the fact sheet, and answer the questions.

A constitutional convention was called in Philadelphia in 1787. Each of the states was invited to send a delegation to discuss a revision of the Articles. Only Rhode Island failed to send a delegation. Between May and September 1787, a document that proposed not a revision of the Articles of Confederation but the establishment of a new republican democracy was produced. The delegates agreed to three days of debate and that two-thirds of the states would have to approve the document for it to be accepted. The delegates were divided into two main factions—the Anti-Federalists and the Federalists.

The Anti-Federalists, led by James Wilson, Patrick Henry, and George Mason, had the support of the states. There was a general distrust of a strong national government among America's citizens. The Anti-Federalists argued that large populations represented by a few men would lead to a failure on the representatives' part to know the desires of their constituents. Anti-Federalists believed that a strong federal government would lead to the destruction of the state governments and that a federal court system would undermine the work of local courts. They also opposed the establishment of a strong executive branch, fearing it would lead to tyranny. The Anti-Federalists were particularly concerned with the lack of a protection of individual rights within the document.

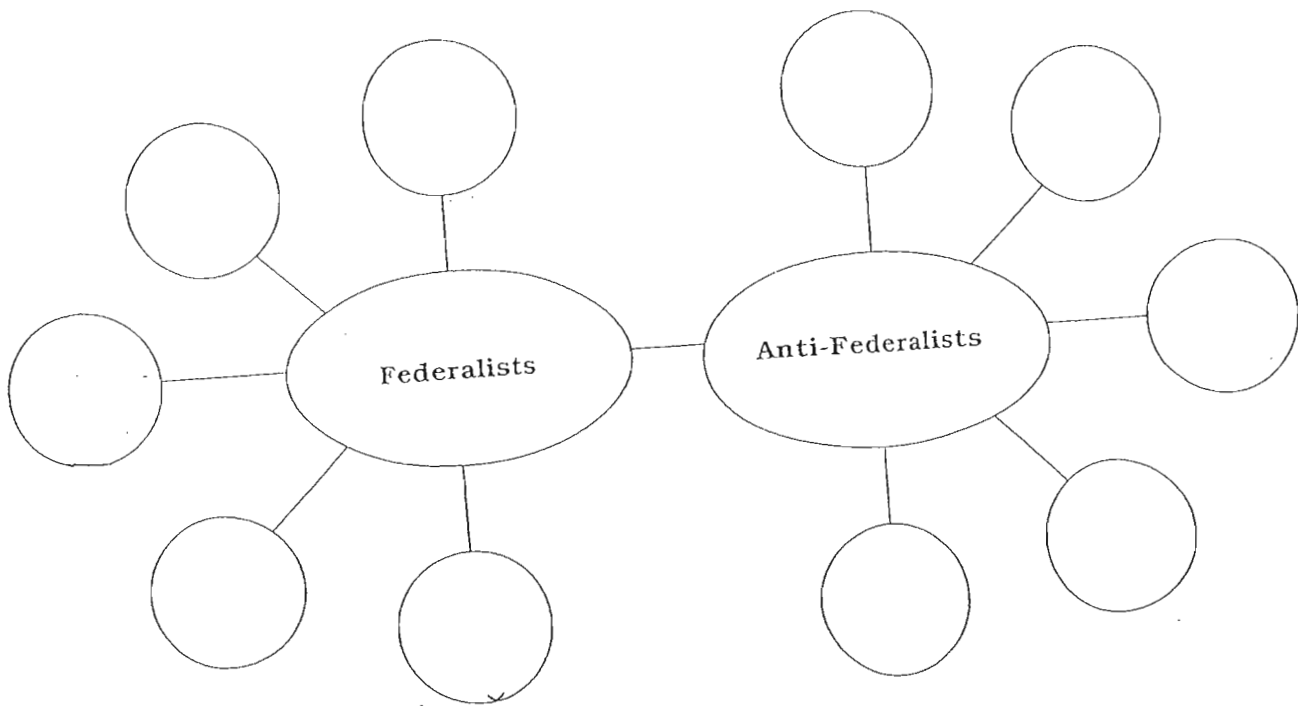
The Federalists, led by John Jay, James Madison, and Alexander Hamilton, enjoyed the support of America's two truly national political figures, Benjamin Franklin and George Washington. Strong nationalists, who believed that the states should work together for the improvement and betterment of the nation, the Federalists sought to establish a federal government that could act in the national interest. They believed that a republican democracy could resolve issues of economics and politics by reaching consensus within the Congress. The Federalists proposed a government consisting of three branches, within which a system of checks and balances would prevent any single branch from becoming too powerful. Well-organized and well-financed, the Federalists succeeded in gaining passage of the new Constitution, and the document was sent to the states.

It was at this point that the real debate began. In every town and city up and down the Eastern seaboard, debate raged. Newspapers, pamphlets, and broadsides supported one side or the other. The new Constitution was debated in town meetings, and state conventions gathered to decide the fate of the proposal. Eighty-five letters written by the Federalists served as a blueprint for debate at the state conventions. Two-thirds of these letters were written by Jay, Hamilton, and Madison. Later these letters would be compiled in what we know today as *The Federalist Papers*.

After much debate, the new Constitution, which limited and clearly stated the powers of the federal government, was ratified by the required nine states, and the Articles of Confederation became a memory.

answer questions on  
the back.

# Federalists v. Anti-Federalists



1. The executive branch had too much power.
2. Power needed to be divided between the states and the national government.
3. The "necessary and proper" clause gave too much power to the Congress.
4. The new government needed a strong executive.
5. Since all rights cannot be listed in the body of the Constitution, it is better to add a bill of rights after ratification.
6. No bill of rights had been proposed.
7. Because all branches were equal, no branch could control the others.
8. The national government could maintain an army in peacetime.
9. In a republican form of government, representation is based on the consent of the governed.
10. The proposed constitution gave too much power to the national government at the expense of the states.

Bartels/ Berenson  
US 32  
Due:

### **To Ratify, or Not to Ratify...That is the Question...**

As the debate raged on in the United States regarding ratification of the Constitution, many different forms of propaganda were used to try to sway the opinions of Americans. For this assignment, imagine that you have been hired to produce a persuasive advertisement either for or against ratification. You will draw from a hat in class to determine whether you are a federalist or an anti-federalist. You must then create a poster, pamphlet or political cartoon that reflects your viewpoint. Your bias **MUST** shine through. However, **DO NOT INDICATE ANYWHERE ON YOUR PROJECT THAT YOU ARE AN ANTI-FEDERALIST OR FEDERALIST.** You must support your side by providing persuasive evidence to influence the public. Upon the completion of your assignment you will bring your project to class and have your classmates guess what side you were supporting. You will be graded on content, neatness and ability to clearly convey your side.

# THE BILL OF RIGHTS

**A. Picking the Right Rights:** *(Listed below are 16 "rights." Only 8 of those listed are actually found in the first 10 amendments to the U.S. Constitution, commonly known as the Bill of Rights. Put a check next to the "rights" that are found in the Bill of Rights.)*

## THE BILL OF RIGHTS GRANTS AMERICANS THE RIGHT TO:

- |  |  |
|--|--|
| <input type="checkbox"/> 1. free public-school education                         | <input type="checkbox"/> 10. petition for a redress of grievances against the government     |
| <input type="checkbox"/> 2. free speech  | <input type="checkbox"/> 11. not be a witness against oneself if accused of a crime          |
| <input type="checkbox"/> 3. decent housing                                       | <input type="checkbox"/> 12. adequate medical care   |
| <input type="checkbox"/> 4. employment   | <input type="checkbox"/> 13. not be subject to unreasonable searches by government officials |
| <input type="checkbox"/> 5. a speedy public trial when one is accused of a crime | <input type="checkbox"/> 14. government-funded public roads                                  |
| <input type="checkbox"/> 6. a healthy environment                                | <input type="checkbox"/> 15. public assistance (welfare payments) if one is poor             |
| <input type="checkbox"/> 7. refuse to house members of the military in peacetime | <input type="checkbox"/> 16. not be subjected to cruel and unusual punishments               |
| <input type="checkbox"/> 8. freedom of religion                                  |  |
| <input type="checkbox"/> 9. adequate food  |  |

## A P P E N D I X I

### The Bill of Rights and Other Constitutional Amendments

**M**eeting in New York City on September 25, 1789, the first Congress submitted twelve proposed changes to the Constitution—called articles or amendments—for ratification by the states. (See p. 131 for more on the Bill of Rights.) These amendments dealt with certain individual and states' rights not specifically named in the Constitution. Ten of these articles, which were originally proposed as Amendments Three through Twelve, were declared ratified in 1791 and are now known as Amendments One through Ten, or the Bill of Rights. The other two amendments from the original list of twelve proposed were not ratified by the necessary number of states at the time. The first related to the apportionment of representatives; the second, relating to the pay of Congress, was finally ratified in 1992 and became Amendment Twenty-seven.

Since 1791, another seventeen changes have been made to the Constitution, a process that begins when Congress proposes an amendment, which must clear both the House and the Senate by a two-thirds majority. Although state conventions can propose amendments, all the existing amendments have been proposed by the Congress. The proposed amendment is sent to the states for ratification. Three quarters of the states are needed to ratify, and that is usually done by state legislatures (although there has been one exception; see Amendment Twenty-one).

What do the *AMENDMENTS* really mean...

Amendment #1	
Amendment #2	
Amendment #3	
Amendment #4	
Amendment #5	

Amendment #6	
Amendment #7	
Amendment #8	
Amendment #9	
Amendment #10	

## FIRST AMENDMENT MINUTES

[www.aclum.org](http://www.aclum.org)

(click on link in right hand column)

[www.whmp.com/pages/4250358.php](http://www.whmp.com/pages/4250358.php)

**"First Amendment Minutes"** are 90-second segments on civil liberties topics originally aired on WHMP radio in Northampton. They are produced by Bill Newman, the Director of the ACLU of Massachusetts' Western Legal Office, and introduced by MSNBC's Rachel Maddow. Below is a partial list of the topics covered. A full list is available at the WHMP website (above).

See what you think. As an assignment, listen to one of the segments listed below relating to the First Amendment or to juvenile rights. Then write your thoughts about it in your own "First Amendment Minute" – do you agree with its message? Do you think it oversimplifies a complex issue? Can a case be made for a very different point of view? Remember – you have 90 seconds to get *your* point across!

### Freedom of Speech And Expression

- |          |   |
|----------|---|
| 01/20/10 | Texting While Driving – A First Amendment Right?  |
| 01/18/10 | In This Great Recession, Does The Constitution Do The Hungry And Homeless Any Good?         |
| 01/04/10 | A Motorist Displays His Middle Finger To Another Motorist – A Cop                           |
| 12/22/09 | Auld Lang Syne – Let's Celebrate  |
| 12/10/09 | Former Chief GTMO Prosecutor Fired From His Job At The Library Of Congress For Speaking Out |
| 10/14/09 | Regulating Your Sex Life  |
| 10/14/09 | Botox Puts Wrinkles In Free Speech Debate   |
| 08/21/09 | President Obama Wants To Kill Your Aged Grandmother?  |
| 08/14/09 | When The Second Amendment Conflicts With The First  |
| 07/29/09 | Is It A Crime To Say Angry Words To A Cop (Henry Louis Gates & Cambridge Police)            |
| 07/15/09 | Take Me Out To The Ballgame (NYCLU Case For A Red Sox Fan)                                  |
| 06/10/09 | First Amendment Right To Listen (American Sociological Assoc. v. Clinton)                   |

### Student Speech

- |          |   |
|----------|---|
| 12/22/09 | Sex Education In High Schools   |
| 12/01/09 | School Administrators Require Students To Recite The Pledge Of Allegiance |



11/12/09	Supreme Court Justice at High School, Censors Student Newspaper Coverage
10/02/09	Do 4 <sup>th</sup> Graders Have First Amendment Rights?
09/09/09	Harvard University Prohibits Medical Students From Speaking To The Press

#### Freedom of Association

11/05/09	Conference on AIDS
10/02/09	Juvenile Curfew Laws Struck Down
04/29/09	FOIA Suit And The FBI Targeting Muslims
04/08/09	Muslim Scholar Tariq Ramadan Excluded From U.S.

#### Freedom of Religion

12/17/09	South Carolina Tries To Prevent An Atheist From Assuming His Elected Office
12/10/09	And Now Let's Hear From The ACLU Carolers
12/01/09	A Housing Authority Rule Prevents Jewish Residents From Putting A Muzuzzah On Their Door
11/20/09	ACLU Defends TSA Screener, A Rastafarian, Disciplined For Observing His Religion
11/12/09	Religious License Plates

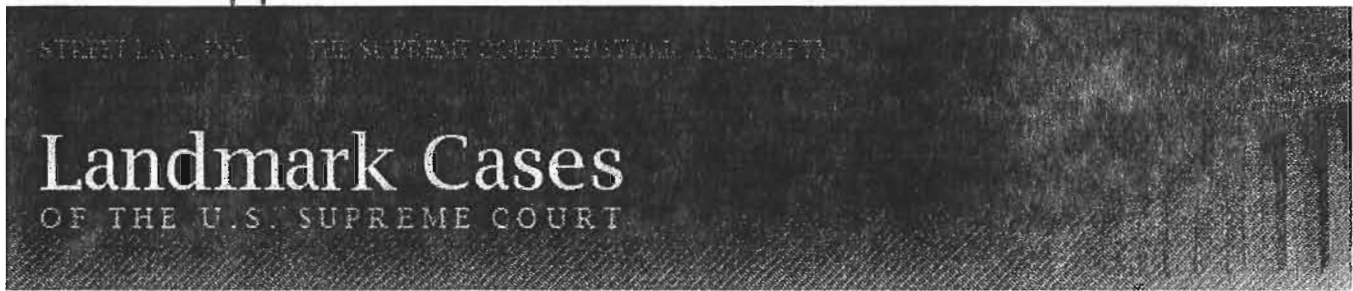
#### Surveillance and the Chilling Effect on First Amendment Rights

12/17/09	Government Surveillance Of Facebook And Twitter
10/29/09	FBI Surveillance Rules Released
10/02/09	Do You Have An FBI File?
07/29/09	Bush Administration Policy Of Spying On Innocent Americans Continues
06/17/09	Government Surveillance Of Phone Calls And E-Mails
06/10/09	Your Phone Company And The NSA
06/03/09	The Story Of Captain James Yee
05/13/09	Law Enforcement Abuse Of Criminal Record Information
04/22/09	Bush Administration Use Of National Security Letters

#### Schools And Juvenile Rights

01/18/10	Juvenile Life Without Parole Sentences For Non-Homicides
10/23/09	Zero Tolerance: Sentencing A Well Behaved 6 Year Old To 45 Days In Reform School
10/14/09	Massachusetts, The State With The Most Punitive Sentences For Juveniles Who Kill
09/25/09	Strip Searching A 13 Year Old Girl
08/21/09	250,000 Kids Each Year Subjected To Corporal Punishment

Mapp v. Ohio (1961)



## Background Summary & Questions (••)

Suspicious that Dollree Mapp might be hiding a person suspected in a bombing, the police went to her home in Cleveland, Ohio. They knocked on her door and demanded entrance. On the advice of her lawyer, Mapp refused to let them in because they did not have a warrant.

After observing her house for several hours and recruiting more officers to the scene, the police forced their way into Mapp's house. When Mapp confronted them and demanded to see their search warrant, one of the officers held up a piece of paper. He claimed it was the search warrant. Mapp grabbed the paper but an officer recovered it and handcuffed Mapp. The police dragged her upstairs and searched her bedroom. Finding nothing there they went to other rooms in the house, including the basement.

As a result of their search of the basement, the police found a trunk containing pornographic books, pictures, and photographs. They arrested Mapp and charged her with violating an Ohio law against the possession of obscene materials. At the trial the police officers did not show Mapp and her attorney the alleged search warrant or explain why they refused to do so. Nevertheless, the court found Mapp guilty and sentenced her to jail.

Mapp and her attorney appealed the case to the Supreme Court of Ohio. Mapp's attorney argued that because the police had no warrant, their search of her basement was illegal. Because the search was illegal, he said, the evidence gained from the search was also illegal. Illegal evidence should not have been allowed in Mapp's trial. In the ruling, the Court disagreed and said that because the evidence was taken peacefully from the trunk, rather than by force from Mapp, it was legal. As a result, Mapp's appeal was denied and her conviction upheld.

Mapp then appealed her case to the Supreme Court of the United States. The case came down to this fundamental question: is evidence obtained through a search that violates the Fourth Amendment admissible in state courts? The Fourth Amendment states "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause . . . and particularly describing the place to be searched, and the persons or things to be seized." The Fourth Amendment, however, does not define when a search or seizure becomes "unreasonable". It also does not explain how evidence obtained from an "unreasonable" search should be treated.

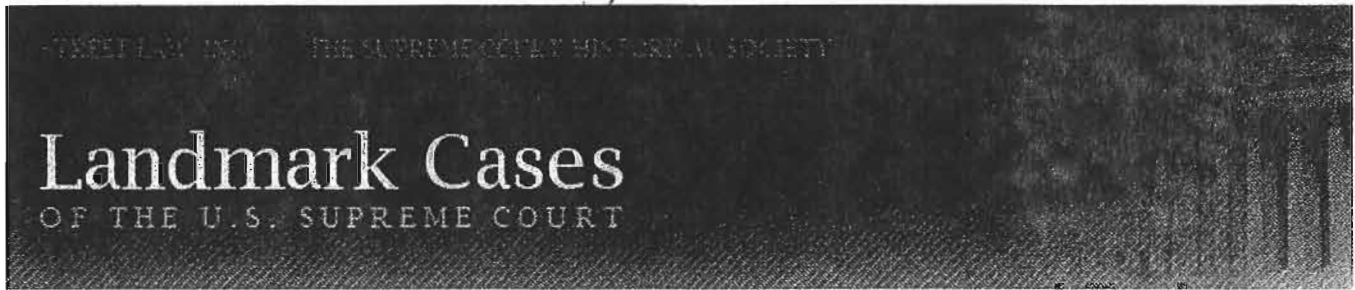
Mapp's case was not the first case to ask this kind of question. In several rulings over the hundred years leading up to *Mapp* the Supreme Court of the United States had tried to answer questions about what, exactly, the Fourth Amendment means. They had agreed that neither federal nor state officials could conduct "unreasonable searches". Furthermore, in *Weeks v. United States*, they had determined that federal officials could not use evidence obtained in such searches at trial. However, they had not ruled on whether *states* could use illegally seized evidence to convict a criminal. Some states, including Ohio, felt that they should be able to make their own determination regarding this issue. Doing so would be consistent with historical tradition—states had always supervised the operation of their criminal justice systems.

In 1960 the Supreme Court of the United States agreed to hear Mapp's case and determine whether the Fourth and Fourteenth Amendments, which said the Fourth Amendment applies to the states, prohibited state officials from using evidence obtained in an unreasonable search. The decision in *Mapp v. Ohio* was handed down in 1961.

### QUESTIONS TO CONSIDER

1. In your opinion, was Mapp right to not let the police enter her house? Explain your reasoning.
2. The Fourth Amendment states "The right of the people to be secure . . . against unreasonable searches and seizures shall not be violated. . . ." Pretend that you were a justice for the Supreme Court of Ohio. What, if anything, would you find unreasonable in the search of Mapp's house? Explain.

*Gideon v. Wainwright (1963)*



## Background Summary & Questions (••)

Between midnight and 8:00 a.m. on June 3, 1961, a burglary occurred at the Bay Harbor Pool Room in Panama City, Florida. In the course of the burglary, a window was smashed and the cigarette machine and jukebox were broken into. A witness claimed to have seen Clarence Earl Gideon in the poolroom early that morning. When Gideon was found nearby with a pint of wine and some change in his pockets, the police arrested him. They charged him with breaking and entering.

Gideon was a semi-literate drifter who could not afford a lawyer. When he appeared at the Florida Circuit Court for trial, he asked the judge to appoint one for him. Gideon argued that the Court should do so because the Sixth Amendment says that everyone is entitled to a lawyer. The judge denied his request, claiming that the state doesn't have to provide a poor person with a lawyer unless "special circumstances" exist. Gideon was left to represent himself. He had been arrested many times before, so he understood some of the legal procedures. However, he did a poor job of defending himself. For instance, his choice of witnesses was unusual—he called the police officers who arrested him to testify on his behalf. He lacked skill in questioning witnesses, which made it difficult for him to present his case.

Gideon was found guilty of breaking and entering and petty larceny, which is a felony in Florida. He was sentenced to five years in a Florida state prison. While there, he began studying law in the prison library. Gideon's study of the law reaffirmed his belief that the Circuit Court's refusal to appoint counsel for him constituted a denial of his rights. With that in mind, he filed a petition with the Supreme Court of Florida for *habeas corpus*, which is an order to free him because he had been illegally imprisoned. That petition was rejected, but Gideon persevered. From his prison cell, he handwrote a petition asking the Supreme Court of United States to hear his case. The Court allowed him to file it *in forma pauperis*, or free of charge. After reading the petition, they agreed to hear his case.

When the Supreme Court of the United States agrees to hear a case, it does so because the case "presents questions whose resolution will have an immediate importance far beyond the particular facts and parties involved" (Lewis 25). The justices were interested not simply with the merits of Gideon's case, but with the larger issue of whether poor people charged with noncapital offenses are entitled to a free lawyer in state criminal trials. In a 1942 case, *Betts v. Brady*, the Court had ruled that in state criminal trials, the state must supply an indigent defendant with a lawyer only if special circumstances exist. These special circumstances include complex charges, incompetence, and illiteracy on the part of the defendant. Gideon did not claim any of these special circumstances, so for the Court to rule in his behalf, they would need to overturn *Betts v. Brady*. The Supreme Court of the United States asked both sides to present arguments on the issue of "Should *Betts v. Brady* be overturned?"

Lewis, Anthony. *Gideon's Trumpet*. New York: Random House, 1964.

### QUESTIONS TO CONSIDER

1. What were the charges against Gideon?
2. Did Gideon seem to be capable of defending himself? Could a lawyer have helped him? If so, how?
3. What was unique about the petition that Gideon filed with the Supreme Court of the United States?
4. Why did the Supreme Court of the United States agree to hear Gideon's case?
5. In *Betts v. Brady*, the Court had said that in state courts, poor people are entitled to an attorney free of charge only if "special circumstances" existed. Gideon did not claim any "special circumstances." Do you think that states should be required to provide him and others like him with a lawyer? Why or why not?

GIDEON V. WAINWRIGHT

# Miranda v. Arizona (1966)

STREETLAW, INC.

THE SUPREME COURT HISTORICAL SOCIETY

## Landmark Cases OF THE U.S. SUPREME COURT

### Background Summary & Questions (••)

Ernesto Miranda was a poor Mexican immigrant living in Phoenix, Arizona in 1963. A Phoenix woman was kidnapped and raped. She identified Miranda in a police lineup. Miranda was arrested, charged with the crimes, and questioned by the police for two hours. The police officers questioning him did not inform him of his Fifth Amendment right against self-incrimination or of his Sixth Amendment right to the assistance of an attorney. The Fifth Amendment states that no person "shall be compelled in any criminal case to be a witness against himself. . . ." The Sixth Amendment states that, "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense."

As a result of the questioning, Miranda confessed in writing to the crimes. His statement also said that he was aware of his right against self-incrimination. During his trial, the prosecution used his confession to obtain a conviction, and he was sentenced to 20 to 30 years in prison on each count.

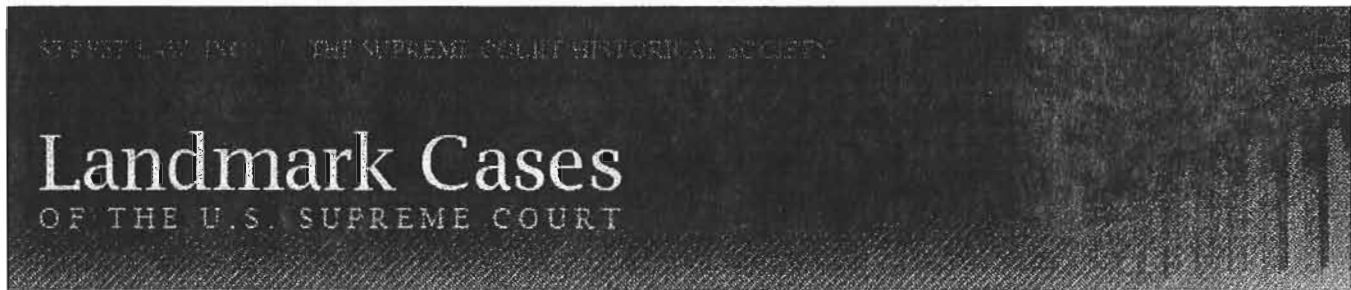
Miranda appealed his case to the Arizona Supreme Court. His attorney argued that his confession should have been excluded from trial because he had not been informed of his rights, nor had an attorney been present during his interrogation. The police officers involved admitted that they had not given Miranda any explanation of his rights. The state argued, however, that because Miranda had been convicted of a crime in the past, he must have been aware of his rights. The Arizona Supreme Court denied Miranda's appeal and upheld his conviction.

The case comes down to this fundamental question: What is the role of the police in protecting the rights of the accused, as guaranteed by the Fifth and Sixth Amendments to the Constitution? The Supreme Court of the United States had made previous attempts to deal with these issues. The Court had already ruled that the Fifth Amendment protected individuals from being forced to confess. They had also held that persons accused of serious crimes have a fundamental right to an attorney, even if they cannot afford one. In 1964, after Miranda's arrest, but before the Court heard his case, the Court ruled that when an accused person is denied the right to consult with his attorney, his or her Sixth Amendment right to the assistance of a lawyer is violated. But do the police have an obligation to ensure that the accused person is aware of these rights before they question that person?

In 1965, the Supreme Court of the United States agreed to hear Miranda's case. At the same time, the Court agreed to hear three similar cases. The Court combined all the cases into one case. Since Miranda was listed first among the four cases considered by the Court, the decision came to be known by that name. The decision in *Miranda v. Arizona* was handed down in 1966.

#### QUESTIONS TO CONSIDER

1. What rights of the accused does the Fifth Amendment protect? The Sixth Amendment?
2. If the police had informed Ernesto Miranda of these rights, do you think he might have done anything differently?
3. Individual rights must be balanced against the values of society at large. For instance, the right to free speech must be balanced against our desire for an orderly society. This is why demonstrations, while protected by the First Amendment, can have certain restrictions placed on them. In *Miranda*, what values or goals of society must be balanced against the right against self-incrimination and the right to counsel?
4. You are probably learning about the rights of the accused in a government or history class. Some would argue that it is the individual's responsibility to know what his or her rights are under the Constitution, and the government can assume that accused persons know their rights without informing them after they are arrested. Do you think the government should have to inform each individual who is arrested of his or her rights? Why or why not?

*Tinker v. Des Moines (1969)*

## Background summary & questions (••)

John and Mary Beth Tinker attended public school in Des Moines, Iowa. In December of 1965 a community group in Des Moines decided to protest American involvement in the Vietnam War by wearing black armbands. The Tinkers agreed to wear their black armbands to school. However, principals in the school district, aware of the students' plans created a rule that any student wearing an armband to school would be suspended unless the student removed the armband. Although the Tinkers knew about this rule, they decided to come to school wearing armbands anyway. After refusing to take the armbands off, John and Mary Beth Tinker were sent home by the principal. Their suspension lasted until they agreed to come back to school without the armbands.

The Tinkers filed a suit in the U.S. District Court to stop the school principals from enforcing the rule in the future. Although the District Court said that this type of protest was a form of expression protected under the First Amendment's freedom of speech clause, the Court sided with the school officials, saying that the rule was needed to "prevent the disturbance of school activities." The Tinkers appealed their case to the U.S. Eighth Circuit Court of Appeals, but they lost. The Tinkers decided to appeal the case to the Supreme Court of the United States.

The fundamental question of the case came down to this: Does the First Amendment's promise of free speech extend to the symbolic speech of public school students? And, if so, in what circumstances is that symbolic speech protected? The First Amendment to the Constitution says, "Congress shall make no law . . . abridging the freedom of speech." The Fourteenth Amendment extends this rule to state government as well, of which schools are a part. However, the First Amendment does not say which kinds of speech are protected. It also does not specify what types of expressive actions should be considered as speech.

The question of what kind of speech or action is protected under the First Amendment has been considered many times by the Supreme Court of the United States. Generally, the Court has held that the First Amendment protects adult symbolic speech that does not harm or threaten to harm. However, at the time of *Tinker*, it was unclear whether students' rights in this area were different.

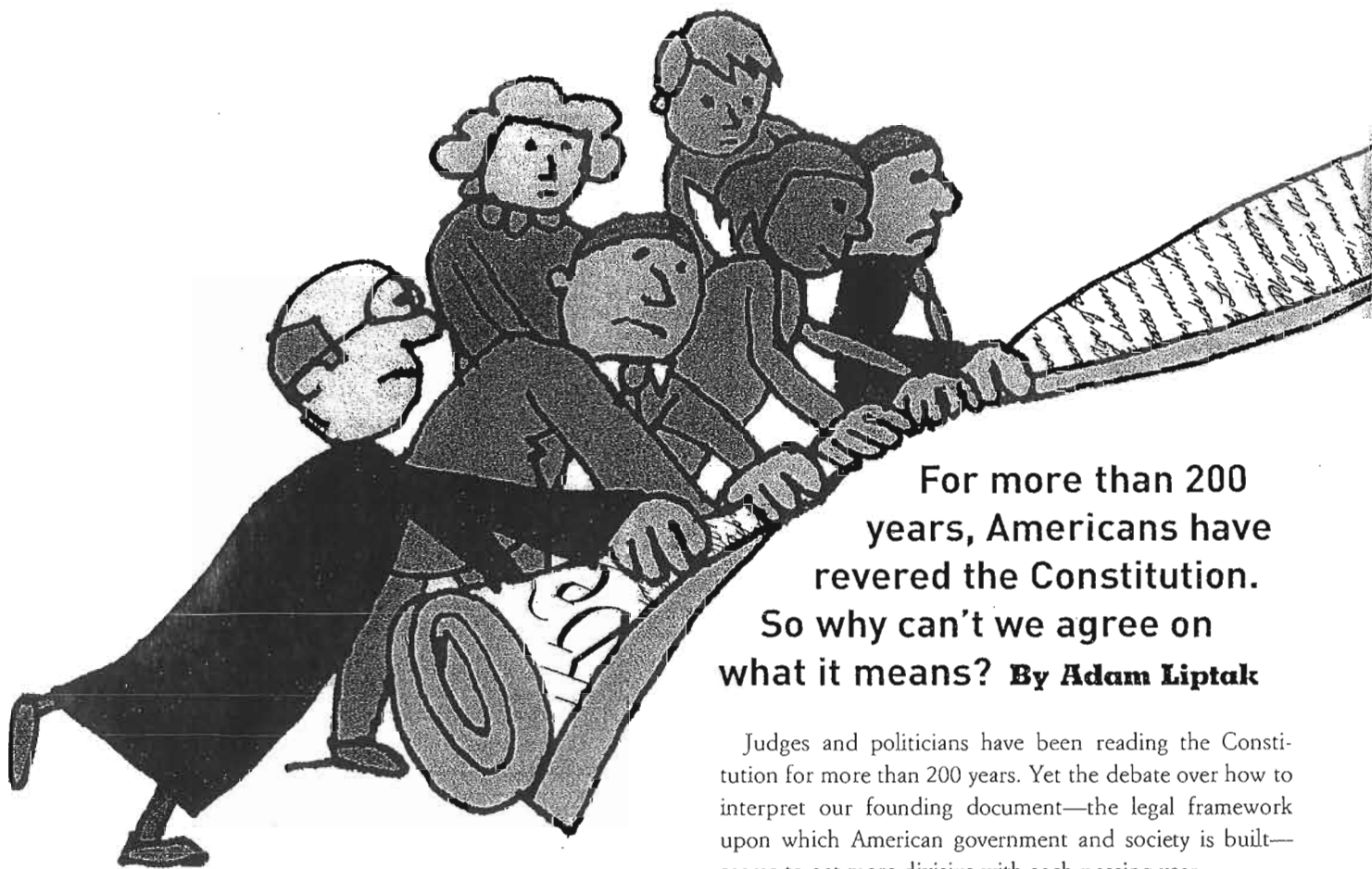
In 1968 the Supreme Court of the United States agreed to hear the Tinker's case and consider whether the Des Moines public schools ban on armbands was an unconstitutional violation of the students' right to free speech. The Court's decision in *Tinker v. Des Moines* was handed down in 1969.

### QUESTIONS TO CONSIDER

1. Do you think that the school policy banning armbands was fair? Why or why not?
2. The students knew they would be suspended if they wore armbands to school and chose to do so anyway. Why do you think they ignored the rule?
3. The First Amendment says "Congress shall make no law . . . abridging the freedom of speech." Why do you think the Supreme Court of the United States has ruled that certain actions should have the same protection as verbal speech? Are these reasons valid?
4. Pretend that students in your school wanted to protest the school-wide ban on smoking. Should they be allowed to protest by wearing T-shirts that read "Up with 'Butts!'"? Why or why not?

### <TINKER V. DES MOINES

# War of Words



For more than 200 years, Americans have revered the Constitution. So why can't we agree on what it means? **By Adam Liptak**

Judges and politicians have been reading the Constitution for more than 200 years. Yet the debate over how to interpret our founding document—the legal framework upon which American government and society is built—seems to get more divisive with each passing year.

It is the question at the heart of the fight over President Bush's appointments to the federal courts, sparking increasingly emotional debates in the Senate, which must confirm or reject the President's nominees. And all of that is just a warm-up for the real battle: filling the first vacancy on the U.S. Supreme Court in more than a decade, following the resignation of Justice Sandra Day O'Connor in July.

## TWO SCHOOLS OF THOUGHT

To follow the action in Washington, you need to understand the two broad schools of thought on how to interpret the Constitution: originalism (sometimes called strict constructionism) and the "living Constitution" school.

**T**he Constitution is a brisk little document, a mere 8,000 words, including its 27 Amendments. You can read it in half an hour, and some of its language flows like poetry: "We the people of the United States," it starts, "in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."







that should be handled by Congress and state legislatures.

"The big lie of the 'living Constitution' is that it helps adapt the country to changing times," says M. Edward Whelan III, a former official

People who favor a "living Constitution" say that it is a special kind of legal document, purposefully studded by the Founding Fathers with ambiguities and meant to adapt to changing times and the changing views of the nation.

"The drafters were using general terms," says Mark V. Tushnet, a constitutional scholar at Georgetown University in Washington. "They weren't spelling it out, and they knew it. That was either because they wanted future generations to resolve it or because they couldn't agree."

Originalists, on the other hand, including President Bush, look to the meaning the Constitution had in 1789. It is, they believe, a legal document like any other—no different from a contract

or a statute. Its words are plain and its meaning should not change over time, no matter what the views of a modern-day judge are.

Originalists say the idea of a "living Constitution" invites what they call "judicial activism" and "legislating from the bench"—judges creating rights that are not explicitly spelled out in the Constitution and getting involved in areas

in the Justice Department and law clerk to Supreme Court Justice Antonin Scalia. "What the 'living Constitution' does is lock in place for all Americans the policy preferences of five Justices."

"Five Justices" constitute a majority on the nine-member Supreme Court. Ever since *Marbury v. Madison*, the 1803 case in which Chief Justice John Marshall declared that "it is emphatically the province and duty of the judicial department to say what the law is," judges have decided which laws are consistent with the Constitution, and which are not.

That power is known as judicial review and it means that federal judges, who are appointed and serve for life, can

strike down laws passed by elected representatives in Congress and the states if they find the laws unconstitutional.

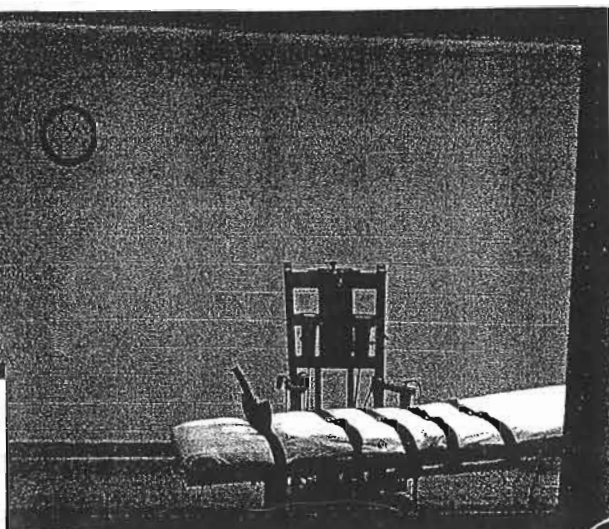
Much of the debate over the President's judicial nominees centers on how aggressively judges should use that power. Politically conservative judges, who tend to favor



## THE CONSTITUTION TODAY

the first in a series

JUVENILE executions, common in 1789, were ruled unconstitutional in March.



PRESIDENT Bush favors a strict interpretation of the Constitution.



HOW SHOULD today's judges interpret what the Framers meant 200 years ago?

originalism, and liberal judges, who tend to favor the "living Constitution" idea, can reach very different conclusions when deciding cases involving contentious issues like free speech, religion, abortion, race, and the death penalty.

### SPECIFIC & ABSTRACT

Not all cases are so hard to decide, since some parts of the Constitution are quite specific. Only people over 35, for example, can be President, plain and simple. But many of the Constitution's key provisions—like "freedom of speech," "due process," and "equal protection"—are a lot more abstract.

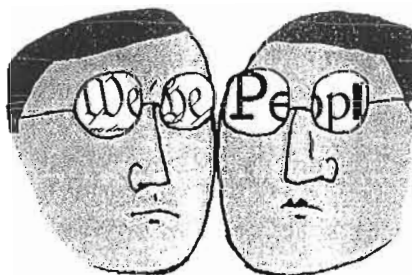
The Founding Fathers, of course, could not have envisioned every possible development in modern American

life. What, for instance, does the Fourth Amendment's prohibition on "unreasonable searches and seizures" have to say about electronic wiretaps?

And while the Constitution gives Congress the power to grant "for limited time to authors and inventors the exclusive right to their respective writings and discoveries," what does that mean in 2005 for file-sharing services like Grokster? Does downloading MP3s without paying the musicians violate copyright law?

The words by themselves, "living Constitution" proponents argue, do not provide more than general guidance in such situations.

Take the question of capital punishment for teenagers. An originalist would say that there is nothing in the Constitution that expressly forbids it. And since teenagers were routinely executed in 1789, they argue, it should not be considered cruel and unusual punishment in the 21st century.



1973: Protesting the Supreme Court's decision in *Roe v. Wade*, still hotly debated today



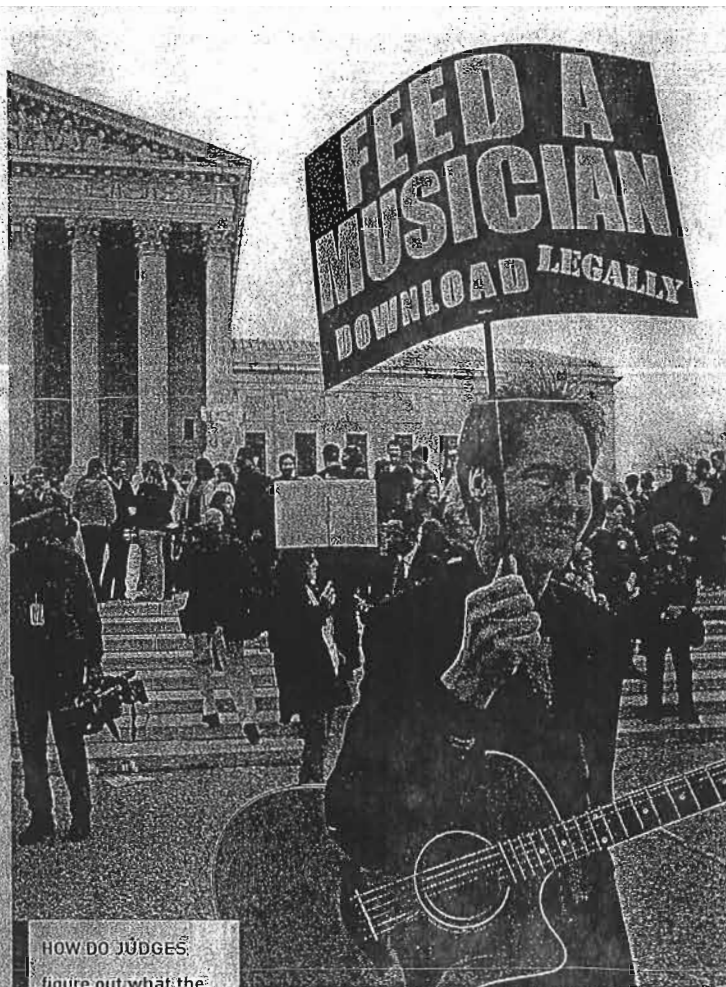
Others say that the Constitution should be responsive to evolving notions of decency and justice. And, indeed, by a 5-to-4 vote, the Supreme Court in March struck down the death penalty for people who were younger than 18 at the time of their crimes.

### A RIGHT TO PRIVACY?

The series of cases that most troubles originalists—and which figures in many of today's most hotly debated social issues—involves a right to privacy that all sides agree does not appear explicitly in the text of the Constitution. It started with a 1965 Supreme Court decision, *Griswold v. Connecticut*, which struck down a Connecticut law that denied married people access to birth control. The Court, in a nutshell, said that married couples, at least when it comes to birth control, had the right to decide what went on in the privacy of their homes, without government interference.

The privacy right first granted in the *Griswold* decision led directly to *Roe v. Wade* in 1973, in which the Supreme Court struck down state laws banning abortion (and thus made it legal throughout the United States), and to other controversial rulings in the last three decades.

With President Bush set to fill one or more Supreme Court vacancies during his second and final term, most observers expect his nominees to be closely questioned at their Senate confirmation hearings about their views of



HOW DO JUDGES figure out what the Constitution "says" about something like downloading MP3s?

culture and popular views and may take those into account in their decisions, along with legal considerations and their judicial philosophy.

That may have been the case, for example, in *Brown v. Board of Education*, the landmark 1954 Supreme Court



A CONFIRMATION BATTLE is expected in the Senate over President Bush's nomination to replace Sandra Day O'Connor on the Supreme Court. The current Justices: (from left) Breyer, Ginsburg, Kennedy, O'Connor, Rehnquist (Chief Justice), Scalia, Souter, Stevens, and Thomas.

these cases, and, in particular, of whether *Roe v. Wade* was an accurate interpretation of the Constitution or whether it constituted "judicial activism."

It's important to remember, however, that judges are not automatons who strictly adhere to one philosophy in every one of the hundreds or thousands of cases they decide.

In fact, judges are human beings just like the rest of us. They watch television, go to the movies, read the newspaper, surf the Internet, and, it is often said, "follow the election returns." In other words, they are aware of popular

decision that outlawed "separate but equal" racial segregation in public schools. The *Brown* decision is considered by many to have been the Court's finest hour. But leading constitutional scholars at the time, even those sympathetic to the result, criticized the decision as judicial activism.

"When you work with the Constitution, you inevitably find out that all of the methods of interpretation should be used," says Professor Tushnet, the constitutional scholar. "You're going to want to do some originalism. You're going to want to do some 'living Constitution.' Everybody does it." ○

Turn to back page for the 2001 Supreme Court confirmation battle

Name:  
Date:

US 32  
Tallevi/Berenson

**“War of Words”** (New York Times Upfront 9/5/05)

*Directions: Please read and annotate the article and answer the questions below.*

1. What is the Central Debate over the Constitution?

2.

What is the “living Constitution” school?	What evidence does this school use to support its interpretations?

3.

What is originalism?	What evidence does this school use to support its interpretations?

4. Why do originalists criticize the living constitution approach?

5. What precedent did *Marbury v. Madison* (1803) set into place?

6. What is the debate over the “right to privacy”?

7. What is judicial activism?